

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 77-1458

In Th

## United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA

**ORIGINAL**  
*Plaintiff-Appellee,*

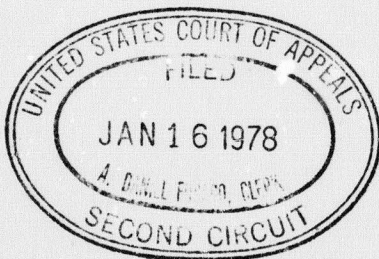
-against-

MICHAEL PAPPADIO,

*Defendant-Appellant.*

*On Appeal From the United States District Court For the  
Eastern District of New York*

### DEFENDANT-APPELLANT'S APPENDIX



SAXE, BACON & BOLAN, P.C.  
*Attorneys for Defendant-Appellant:*  
*Michael Pappadio*  
39 East 68th Street  
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(212) 472-1440

ROY M. COHN  
RON F. POEPPLEIN  
*Of Counsel*

526

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## DOCKET ENTRIES

75 CR 472

NEAHER, J. (pp. 1a-4a)

1a

## TITLE OF CASE

THE UNITED STATES

## ATTORNEYS

For U. S.:

Scit

Kossman (Pappadio)

vs.

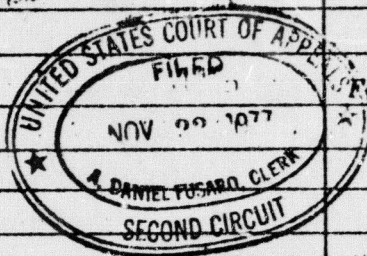
MATTEO DE LORENZO, a/k/a "Marty"

X ALPHONSE ESPOSITO, a/k/a "Anthony"

a/k/a "Sonny" and MICHAEL

PAPPADIO

CLOSED



For Defendant:

De Lorenzo

David Markowitz

Conspiracy to impede collection of income tax; income tax  
 evasion; false tax returns; false statement on loan appl.

## ABSTRACT OF COSTS

## AMOUNT

## CASH RECEIVED AND DISBURSED

|                       |          | DATE    | NAME | RECEIVED | DISBURSED |
|-----------------------|----------|---------|------|----------|-----------|
| Fine,                 | Pappadio | 2066 00 |      |          |           |
| Clerk,                |          |         |      |          |           |
| Marshal,              |          |         |      |          |           |
| Attorney,             |          |         |      |          |           |
| Commissioner's Court, |          |         |      |          |           |
| Witnesses,            |          |         |      |          |           |

77-1458

## DATE

## PROCEEDINGS

|          |                                                                                                                                                                                                   |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6-9-75   | Indictment, J.S.#3, Certified copy of Order transferring case from U.S. District Court, Southern District of N.Y. filed, received from Clerk. Acknowledgment mailed to Clerk for receipt of file. |
| 11/75    | Magistrates Proceeding received from Southern District of New York and filed (all defts) (bonds of all defts placed on vault)                                                                     |
| 1/18/75  | Notices of motions(2) for discovery and for a severance filed ret. 10/24/75 at 3:00 P.M.                                                                                                          |
| 9/18/75  | Notices of motions(4) for severance to dismiss, bill of particulars and discovery and inspection and memorandums of law in support of motions(4) filed ret. 10/24/75 at 3:00 P.M. (PAPPADIO)      |
| 11/18/75 | Notice of motion for severance and bill of particulars filed ret. 10/24/75 at 3:00 P.M. (ESPOSITO)                                                                                                |



## PROCEEDINGS

|          |                                                                                                                                                                                                                                                                                                         |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9/18/75  | Before NEAHER, J.- Case called- Defts not present-counsel present- case adjd to 10/24/75 at 3:00 P.M. for motions-Trial set for 2/2/76 at 10:00 A.M.                                                                                                                                                    |
| 11/21/75 | Before NEAHER, J.- Case called- defts not preset- counsel present- motions adjd without date                                                                                                                                                                                                            |
| 11-25-75 | Stenographers transcript dated 11-21-75 filed                                                                                                                                                                                                                                                           |
| 2/9/76   | Before NEAHER, J.- Case called- deft and counsel present- case adjd to 3/22/76 at 4:30 P.M. for further report                                                                                                                                                                                          |
| 2-11-76  | Stenographers transcript filed dated <del>JAN</del> Feb. 9, 1976                                                                                                                                                                                                                                        |
| 2-18-76  | Govts Memorandum filed in response to defts omnibus motions                                                                                                                                                                                                                                             |
| 3/8/76   | Defts reply memorandum filed                                                                                                                                                                                                                                                                            |
| 3-9-76   | Affidavit of DAVID MARKOWITZ filed                                                                                                                                                                                                                                                                      |
| 3-9-76   | Reply Memorandum FILED ON behalf of deft Michael Pappadio.                                                                                                                                                                                                                                              |
| 4-28-76  | Before Neaheer, J - case called - defts & attys present - defts motion to sever argued - decision reserved - adjd to Oct. 26, 1976 for trial.                                                                                                                                                           |
| 5-14-76  | Letter filed received from Chambers dated May 12, 1975 from Asst. U.S. Atty Rocco re deft Esposito(retd to Chambers)                                                                                                                                                                                    |
| 5-19-76  | Letter filed received from Chambers & retd dated May 18, 1976 from Jay Goldberg, Esq. counsel                                                                                                                                                                                                           |
| 7-7-76   | By NEAHER, J.- Memorandum and Order dtd 7-2-76 denying Pappadio's motion to dismiss indictment filed.                                                                                                                                                                                                   |
| 10/23/76 | Before NEAHER, J. - Case called/ Defts not present. Case adjd to 11/15/76 10:00 a.m. for trial. Continuance granted in the interest of justice from 10/26/76 to 11/15/76 at 10:00 a.m. for trial. 10/26/76 T                                                                                            |
| 10-21-76 | Before NEAHER, J - case called - defts not present defense counsel on behalf of defts De Lorenzo & Pappadio waives speedy trial rights - continuance granted - case adjd to 2-28-77 for trial. 10-21-76 T 2-28-77                                                                                       |
| 2-8-77   | Before Neaheer, J - case called - attys for all defts present - defts not present - defts request for a continuance - granted - case adjd to May 24, 1977 for trial.                                                                                                                                    |
| 1/24/77  | Before Neaheer, J-case called-defts Esposito & Pappadio present with couns deft De Lorenzo reported to be in the hospital-leg-Deft de Lorenzo moves for a severance-motion denied-Deft Esposito moves for a severance-motion denied-Deft Esposito moves for adjd-granted-case adjd to 8/15/77 for trial |
| 1/31/77  | Before Platt, J-case called-deft De Lorenzo reported unable to stand trial (hospital)case referred back to Neaheer, J.]l]                                                                                                                                                                               |
| -15-77   | Stipulation filed re witness Gerald Cohen etc (received from Chambers)                                                                                                                                                                                                                                  |



| DATE    | PROCEEDINGS (continued)                                                                                                                                                                                                                                                                                                                 | V. EXCLUDABLE DELAY |     |     |     |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----|-----|-----|
|         |                                                                                                                                                                                                                                                                                                                                         | (a)                 | (b) | (c) | (d) |
| 8-15-77 | Before Neaheer, J - case called - defts present with attys - J. Goldberg moves to have Victor Schwartz admitted Pro Hace Vice - granted - defts Esposito & De Lorenzo move to sever trial - motion denied - Jurors selected and sworn - trial ordered and begun - trial contd to 8-16-77 at 10:15 am.                                   |                     |     |     |     |
| 8-16-77 | Before Neaheer, J - case called - defts present with attys - trial resumed - Trial adjd to 8-17-77.                                                                                                                                                                                                                                     |                     |     |     |     |
| 8-17-77 | Before Neaheer, J - case called - defts present with counsels - trial resumed - trial contd to 8-18-77.                                                                                                                                                                                                                                 |                     |     |     |     |
| 8-18-77 | Before Neaheer, J - case called - defts present with attys - trial resumed - trial contd to 8-19-77.                                                                                                                                                                                                                                    |                     |     |     |     |
| 8-19-77 | Before Neaheer, J - case called - defts present with attys - trial resumed - trial contd to 8-22-77.                                                                                                                                                                                                                                    |                     |     |     |     |
| 8-22-77 | Before Neaheer, J - case called - trial contd - Govt rests - defts Esposito moves for judgment of acquittal - argued - decision reserved - trial adjd to 8-23-77 at 10:30 am.                                                                                                                                                           |                     |     |     |     |
| 8-23-77 | Before Neaheer, J - case called trial resumed - deft Esposito's motion for judgment of acquittal - granted. Motion to dismiss counts, 2,8,9,11,13,20 and 21 is granted - motion for judgment of acquittal and mistrial as to deft De Lorenzo denied - defts De Lorenzo & Pappadio rest - Govt sums up - trial contd to 8-24-77          |                     |     |     |     |
| 8-23-77 | By Neaheer, J - Judgment of acquittal filed ESPOSITO                                                                                                                                                                                                                                                                                    |                     |     |     |     |
| 8-24-77 | By Neaheer, J - Order of sustenance filed                                                                                                                                                                                                                                                                                               |                     |     |     |     |
| 8-24-77 | Redacted indictment filed (unsigned) recvd from Chambers. (as to defts De Lorenzo & Pappadio)                                                                                                                                                                                                                                           |                     |     |     |     |
| 8-25-77 | Before NEAHER, J - case called - defts present with attys - Counsel Jacob Kossman sums up to deft Pappadio; David Marks counsel for deft De Lorenzo sums up - AUSA Scotti gives rebuttel for Govt. Judge charges Jury - Jury retires to deliberate at 4 PM. Jury sent home at 5:50 PM. Jury to continue deliberations at 10 am 8-25-77. |                     |     |     |     |
| 8-25-77 | By Neaheer, J - Order <del>xxxx</del> of Sustenance filed.                                                                                                                                                                                                                                                                              |                     |     |     |     |
| 8-25-77 | Before NEAHER, J - case called - Jury deliberations contd - jury returns at 2:40 PM with a verdict of guilty as to both defts on counts 1,3,4,5,6,7,10, 12, 17, 18 and 19 - sentences adjd without date - Jury excused - trial concluded.                                                                                               |                     |     |     |     |
| 8-25-77 | 7 transcripts filed (pgs 1 to 1231) dated 8-15, 8-16, 8-17; 8-18; 8-19; 8-22 and 8-23-77 respectively)                                                                                                                                                                                                                                  |                     |     |     |     |
| 8-29-77 | Two transcripts filed dated 8-24 and 8-25-77 (pgs 1232 to 1398)                                                                                                                                                                                                                                                                         |                     |     |     |     |

(C)



| DATE     | PROCEEDINGS (continued)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | V. EXCLUDABLE DELAY |     |     |     |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----|-----|-----|
|          | (Document No.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | (a)                 | (b) | (c) | (d) |
| 10-28-77 | Before Neaher, J - case called - Deft/ & counsel David Markowitz present - = deft is sentenced to 2 years imprisonment on each count - to run concurrently - execution of which is suspended and deft is placed on probation for 3 years. Execution of sentence stayed for 10 days. Form A filed.                                                                                                                                                                                                                         |                     |     |     |     |
| 10-28-77 | Judgment & commitment filed - certified copies to Marshal., ( DE LORENZO)                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                     |     |     |     |
| 10-28-77 | Before Neaher, J - case called - deft PAPPADIO & atty Jacob Kossman present - deft sentenced on 2 years imprisonment on each count to run concurrently pursuant to 18:3651 - to serve 6 months and balance of 18 months is suspended & deft placed on probation for 3 yrs. Deft is further sentenced to pay a \$2,000 fine consecutively on counts 1, 3, 4, 5, 6, 7, 10, 12, 17, 18 and 19 and pay the cost of prosecution - execution of sentence stayed pending appeal. Deft informed of right to appeal. Form A filed. |                     |     |     |     |
| 10-28-77 | Judgment and commitment and order of probation filed - certified copies to probation & marshal. (PAPPADIO)                                                                                                                                                                                                                                                                                                                                                                                                                |                     |     |     |     |
| 11-4-77  | Notice of appeal filed - docket entries and duplicate of notice mailed to the court of appeals. (PAPPADIO)                                                                                                                                                                                                                                                                                                                                                                                                                |                     |     |     |     |
| 11-16-77 | Record on appeal certified and mailed to the court of appeals (Pappadio)                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                     |     |     |     |

A TRUE COPY ATTEST  
11/16/77  
LEWIS DECEL, CLERK  
BY *[Signature]* DEPUTY CLERK



# JUDGMENT AND COMMITMENT ORDER (Filed October 28, 1977) 5a

United States District Court for the District of Columbia

United States of America vs.

DEFENDANT

MICHAEL PAPPADIO

73 CR 472

## JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government  
the defendant appeared in person on this date

10 28 1977

COUNSEL

☐ WITHOUT COUNSEL

However, the court advised defendant of his right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived a portion of his rights.

☒ WITH COUNSEL

Irvin D. Schlacter by Jacob Kosman  
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea.

☐ NOLO CONTENDERE.

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged.

☒ GUILTY in counts 1, 3, 4, 5, 6, 7, 10, 12, 17, 18 and 19

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-26, U.S.C. Secs. 7201 and T-18, U.S.C. Sec. 2, in that from on or about Jan. 1966 and continuing up to and including Jan. 1973, the defendant, with others, did agree together to defraud the U.S. by impeding, obstructing and defeating the lawful governmental functions of the Internal Revenue Service of the Treasury Dept. in the ascertainment, computation, assessment and collection of the revenue, to wit: income taxes

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

2 years on each count to run concurrently and pursuant to T-18, U.S.C. Sec. 3651 - defendant is to serve 6 months and balance of 18 months is suspended and defendant is placed on probation for 3 years. Defendant is further sentenced to pay a \$2,000 fine consecutively on counts 1, 3, 4, 5, 6, 7, 10, 12, 17, 18 and 19 and pay the cost of prosecution - Execution of sentence is stayed pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the probation period, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends.

COMMITMENT RECOMMENDATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

Edward R. Neuber

Date

10-31-77

39



NOTICE OF APPEAL (Filed November 4, 1977)  
UNITED STATES DISTRICT COURT

6a

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

**FILED**  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

Docket Number

75-CR-472-1

MICHAEL PAPPADIS

★ NOV 4 1977 ★

TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

EDWARD R. NEAHER II  
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that

Michael Pappadis

appeals to

the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other

(specify) of conviction

entered in this action on

October 31, 1977

(Date)

Date

Nov 3, 1977

Address

Saxe, Bacon + Bolan P.C.  
(Counsel for Appellant)

39 East 68th Street

New York, New York 10021

To: HON. DAVID G. TRAGER

UNITED STATES ATTORNEY

EASTERN DISTRICT OF NEW YORK

225 CHAMMAN PLAZA EAST

BROOKLYN, NEW YORK 11201

Phone Number

(212) 472-1400

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

► QUESTIONNAIRE

☐ I am ordering a transcript

☒ I am not ordering a transcript

Reason:

☒ Daily copy is available

☐ U.S. Attorney has placed order

☐ Other. Attach explanation

► TRANSCRIPT ORDER

Prepare transcript of

☐ Pre-trial proceedings

☐ Trial

☐ Sentence

☐ Post-trial proceedings

DESCRIPTION OF PROCEEDINGS  
FOR WHICH TRANSCRIPT IS  
REQUIRED (INCLUDE DATE)

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ► Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

Saxe, Bacon + Bolan P.C.

DATE

November 3, 1977

► COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and  
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number  
of pages.

Date

Signature

(Court Reporter)

ORIGINAL



75 CRIM. 410

Form No. USA-23a-274 (Ed. 9-25-66)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

MATTEO DE LORENZO, a/k/a "Marty"  
ALPHONSE ESPOSITO, a/k/a "Anthony",  
a/k/a "Sonny", and  
MICHAEL PAPPADIO,

Defendants.

INDICTMENT

75 Cr.

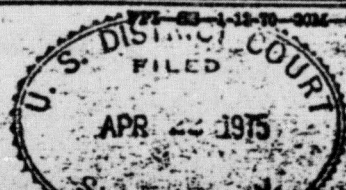
(in violation of 18 U.S.C. §§ 2,  
and 26 U.S.C. §§ 7201,  
7206(1).)

PAUL J. CURRAN

United States Attorney.

A TRUE BILL

Gerald T. Brandon, Jr.  
Foreman.



JUDGE CONNER

4-22-75 Indictment Order Sealed  
S/w order for Trial by

Pierce, J.

4/23/75 Indictment order unsealed  
4/25/75- All defendants (attys. present) <sup>Pierce</sup> dis-  
plead not guilty. Bail: <sup>ENGEL</sup>  
De Lorenzo (\$50,000. surety bond) continue  
Esposito (\$20,000. surety bond) continue  
Pappadio (\$25,000. surety bond) continued  
Case assigned for all purposes to me  
Conner, J.

Wyatt, J.

ORIGINAL INDICTMENT (Filed April 22, 1975)  
(pp. 7a-23a)

7a



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

MATTEO DE LORENZO, a/k/a "Marty",  
ALPHONSE ESPOSITO, a/k/a "Anthony"  
a/k/a "Sonny", and MICHAEL  
PAPPADIO,

Defendants.

75 CRIM. 410

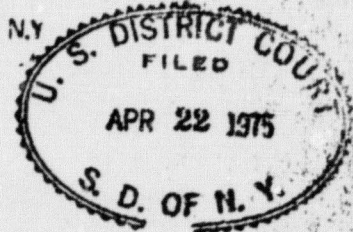
INDICTMENT

75 Cr.

U.S. DISTRICT COURT S.D. N.Y.

JUN 9 1975

TIME A.M. ....  
P.M. ....



INTRODUCTION

1. At all relevant times herein MICHAEL PAPPADIO was officer and stockholder of, and an authorized signator on payroll and checking accounts for, M.B.H. Sales, Inc. (hereinafter referred to as "MBH"), a New York corporation, and Bidio Management Corp. (hereinafter referred to as "Bidio"), a New York corporation.

2. At all relevant times the principal place of business of MBH and of Bidio was 325 West 37th Street, New York, New York.

COUNT ONE

The Grand Jury charges:

1. From on or about January 1966 and continuing up to and including January 1973, in the Southern District of New York, and elsewhere, MATTEO DE LORENZO and MICHAEL PAPPADIO, the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other (a) to defraud the United States by impeding, impairing, obstructing and defeating the lawful governmental functions of the Internal Revenue Service of the Treasury Department of the United States in the ascertainment, computation, assessment, and



collection of the revenue, to wit: income taxes, and  
(b) to violate Sections 7201 and 7206(1) of Title 26  
United States Code.

9a

2. It was a part of this conspiracy that said defendants and their co-conspirators would unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income taxes due and owing to the United States by MBH and Bidio for the years 1969, 1970 and 1971.

3. Among the means by which said defendants and their co-conspirators would and did carry out this conspiracy were the following:

a. MICHAEL PAPPADIO would and did enter falsely, and cause to be entered falsely, on the payroll and the insurance records for MBH and Bidio, the name of Matteo De Lorenzo as an employee of said corporations.

b. MICHAEL PAPPADIO would and did issue, and cause to be issued, and sign checks payable to Matteo De Lorenzo and drawn on the corporate account and on the corporate payroll accounts of MBH and Bidio;

c. MICHAEL PAPPADIO would and did file, and cause to be filed, Federal Corporate Income Tax Returns (Form 941), on behalf of MBH and Bidio, and would and did indicate falsely and cause to be indicated falsely thereon that MATTEO DE LORENZO was an employee of those corporations and was receiving a salary therefrom which was in payment for services performed for said corporations and which was falsely and fraudulently deducted by MBH and Bidio as "salaries and wages" on the Annual Federal Corporate Income Tax Return (Form 1120);



d. MICHAEL PAPPADIO would and did issue falsely, and cause to be issued falsely, Annual Employee Wage and Tax Statements (Form W-2) on behalf of MBH and Bidio, bearing the name of Matteo De Lorenzo, and MATTEO DE LORENZO would and did file with the Internal Revenue Service these false Annual Employee Wage and Tax Statements listing himself as an employee of MBH and Bidio on his Individual Income Tax Returns (Form 1040); and

e. MATTEO DE LORENZO would and did file, and cause to be filed, Individual Federal Income Tax Returns on which were indicated falsely the source of his income as "salary" received as a "salesman" for MBH and for Bidio, whereas, in truth and in fact, as both MICHAEL PAPPADIO and MATTEO DE LORENZO then and there well knew, MATTEO DE LORENZO performed no services for MBH or Bidio and neither corporation was entitled to deduct such salary payments from income taxable to MBH or to Bidio.

#### OVERT ACTS

4. In pursuance of this conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

a. during 1966 MATTEO DE LORENZO prepared and executed a Employee's Withholding Exemption Certificate (Form W-4) and filed it with MBH, 325 West 37th Street, New York, New York;

b. on or about April 30, 1969 at 325 West 37th Street, New York, New York MICHAEL PAPPADIO subscribed, as Treasurer, to the Employer's Quarterly Federal Tax Return (Form 941) for MBH for the first quarter of 1969;



325 West 37th Street, New York, New York, MICHAEL PAPPADIO, as authorized signator of the corporation, signed, and caused to be signed, payroll check number 1485 payable to Matteo De Lorenzo and drawn on the account of MBH;

d. on or about May 2, 1969 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO, as authorized signator of the corporation, signed, and caused to be signed, payroll check number 1656 payable to Matteo De Lorenzo and drawn on the account of MBH;

e. on or about August 22, 1969 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as President, the Federal Corporate Income Tax Return (Form 1120) and supporting schedules for MBH for the fiscal year ending October 31, 1969;

f. on or about March 19, 1970 at 261 Broadway, New York, New York, MATTEO DE LORENZO subscribed to an Individual Federal Income Tax Return (Form 1040) for the calendar year 1969;

g. on or about April 30, 1970 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as Treasurer, to the Employers' Quarterly Payroll Tax Return (Form 941) for Bidio for the first quarter of 1970;

h. on ~~to~~ about October 2, 1970 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO, as authorized signator of the corporation, signed, and caused to be signed, payroll check number 106 payable to Matteo De Lorenzo and drawn on the account of Bidio;

i. on or about November 24, 1970 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as President, to the Federal Corporate Income Tax Return (Form 1120) and supporting schedules



for Bidio for the fiscal year ending August 31, 1970;

12a

j. on or about March 22, 1971 at 261 Broadway, New York, New York, MATTEO DE LORENZO subscribed to an Individual Federal Income Tax Return (Form 1040) for the calendar year 1970;

k. on or about April 29, 1971 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as President, to the Employer's Federal Quarterly Tax Return (Form 941) for Bidio for the first quarter of 1971;

l. on or about July 29, 1971 at 325 West 37th Street, New York, New York MICHAEL PAPPADIO subscribed, as President, to the Employer's Federal Quarterly Tax Return (Form 941) for Bidio for the second quarter of 1971; and

m. on or about July 31, 1971 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO, as authorized corporate signator, signed and caused to be signed, payroll check number 1372 payable to Matteo De Lorenzo and drawn on the account of Bidio.

(Title 18, United States Code, Section 371).

COUNT TWO

The Grand Jury further charges:

1. From on or about January 1970 and continuing up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ALPHONSE ESPOSITO and MICHAEL PAPPADIO, the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other (a) to defraud the United States by impeding, impairing, obstructing and defeating the lawful governmental functions of the Internal Revenue Service of the Treasury Department of the United States in the



ascertainment, computation, assessment, and collection of the revenue, to wit: income taxes, and (b) to violate Sections 7201 and 7206(1) of Title 26, United States Code and Section 1014 of Title 18, United States Code.

2. It was a part of this conspiracy that said defendants and their co-conspirators would unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income taxes due and owing to the United States by Bidio for the years 1970 and 1971.

3. Among the means by which said defendants and their co-conspirators would and did carry out this conspiracy were the following:

a. MICHAEL PAPPADIO would and did enter falsely, and cause to be entered falsely, on the payroll and the insurance records for Bidio, the name of Alphonse Esposito as an employee of said corporation;

b. MICHAEL PAPPADIO would and did issue, and cause to be issued, and sign checks payable to Alphonse Esposito on the corporate account and on the corporate payroll account of Bidio;

c. MICHAEL PAPPADIO would and did file, and cause to be filed, a Federal Corporate Income Tax Return (Form 1120) and Employer's Quarterly Federal Tax Returns (Form 941), on behalf of Bidio, and would and did indicate falsely and cause to be indicated falsely thereon that Alphonse Esposito was an employee of Bidio and was receiving a salary therefrom which was in payment for services performed for Bidio and which was falsely and fraudulently deducted by Bidio as "salaries and wages" on the Annual Federal Corporate Income Tax Return (Form 1120);

d. MICHAEL PAPPADIO would and did issue falsely, and cause to be issued falsely, Annual Employee



Wage and Tax Statements (Form W-2) on behalf of Bidio, bearing the name of Alphonse Esposito and ALPHONSE ESPOSITO would and did file with the Internal Revenue Service these false Annual Employee Wage and Tax Statements listing himself as an employee of Bidio on his Individual Income Tax Returns (Form 1040);

e. ALPHONSE ESPOSITO would and did file, and cause to be filed, Individual Federal Income Tax Returns on which were indicated falsely the source of his income as "wages" received as a "salesman" for Bidio, whereas, in truth and in fact, as both MICHAEL PAPPADIO and ALPHONSE ESPOSITO then and there well knew, ALPHONSE ESPOSITO performed no services for Bidio, and Bidio was not entitled to deduct such salary payments from income taxable to it; and

f. ALPHONSE ESPOSITO would and did make false statements and reports upon applications for loans in the amounts of \$35,000 and \$4112.40 he submitted and caused to be submitted to the Security Federal Savings and Loan Association and the American Bank and Trust Company respectively, for the purpose of influencing said Savings and Loan Association and said Bank and Trust Company to approve said loans;

#### OVERT ACTS

4. In pursuance of this conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

a. in or about 1970 ALPHONSE ESPOSITO prepared and executed a Employee's Withholding Exemption Certificate (Form W-4) and filed it with Bidio, 325 West 37th Street, New York, New York;

b. on or about October 30, 1970 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed,



as Treasurer, the Employer's Quarterly Federal Tax Return (Form 941) for Bidio for the first third quarter of 1970; 15a

c. on or about November 24, 1970 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO, subscribed, as President, to the Federal Corporate Income Tax Return (Form 1120) and supporting schedules for Bidio for the fiscal year ending August 31, 1970;

d. on or about January 26, 1971 at 325 West 37th Street, New York, New York MICHAEL PAPPADIO subscribed, as Treasurer, to the Employers' Quarterly Payroll Tax Return (Form 941) for Bidio for the fourth quarter of 1970;

e. on or about April 14, 1971 ALPHONSE ESPOSITO subscribed to a joint Individual Federal Income Tax Return (Form 1040) for the calendar year 1970, which Return was caused to be prepared by ALPHONSE ESPOSITO at 41 East 42nd Street, New York, New York;

f. on or about April 29, 1971 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as President, to the Employer's Federal Quarterly Tax Return (Form 941) for Bidio for the first quarter of 1971;

g. on or about July 29, 1971 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as President, to the Employer's Federal Quarterly Tax Return (Form 941) for Bidio for the second quarter of 1971;

h. on or about July 6, 1971 ALPHONSE ESPOSITO subscribed to a loan application and filed said application with the American Bank & Trust Company, 301 East Fordham Road, Bronx, New York;

i. on or about July 29, 1971 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as President, to the Employer's Federal Quarterly Tax Return (Form 941) for Bidio for the second quarter of 1971;



j. on or about September 9, 1971, ALPHONSE ESPOSITO subscribed to a loan application and filed said application with the Security Federal Savings & Loan Association, Staten Island, New York;

k. on or about April 11, 1972 ALPHONSE ESPOSITO subscribed to a joint Individual Federal Income Tax Return (Form 1040) for the calendar year 1971 which Return was caused to be prepared by ALPHONSE ESPOSITO at 41 East 42nd Street, New York, New York;

l. in or about April 1974 ALPHONSE ESPOSITO went to the 12th floor of 519 8th Avenue, New York, New York and had a conversation; and

m. in or about April 1974 MICHAEL PAPPADIO had a telephone conversation with Richard Daro.

(Title 18, United States Code, Section 371.)

COUNT THREE

The Grand Jury further charges:

On or about December 24, 1969, the defendant MICHAEL PAPPADIO, a responsible corporate officer of MBH, which then had its principal place of business in the Southern District of New York, aided and abetted by the defendant MATTEO DE LORENZO, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income taxes due and owing by MBH to the United States of America, for MBH's fiscal year ending October 31, 1969, by preparing and causing to be prepared, by signing and causing to be signed, by filing and causing to be filed with the Director, North Atlantic Service Center, Andover, Massachusetts an income tax return wherein it was stated that the taxable income of MBH for said fiscal year was \$48.55 and that there was no tax due thereon, which return was false and fraudulent in that the defendant



PAPPADIO then and there well knew that the taxable income of MBH for said fiscal year was approximately \$30,441.55, upon which taxable income there was due and owing to the United States of America an income tax of approximately \$8,814.34.

(Title 26, United States Code, Section 7201;  
Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

On or about November 24, 1970, the defendant MICHAEL PAPPADIO, a responsible corporate officer of Bidio, aided and abetted by the defendants MATTEO DE LORENZO and ALPHONSE ESPOSITO, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income taxes due and owing by Bidio to the United States of America for Bidio's fiscal year ending August 31, 1970, by preparing and causing to be prepared, by signing and causing to be signed, by filing and causing to be filed with the Director, North Atlantic Service Center, Andover, Massachusetts an income tax return wherein it was stated that the taxable income of Bidio for said fiscal year was \$92.40 and that the total amount of tax due thereon was \$22.36, which return was false and fraudulent in that the defendant PAPPADIO then and there well knew that the taxable income of Bidio for said fiscal year was approximately \$21,542.40, upon which taxable income there was due and owing to the United States of America an income tax of approximately \$5,015.16.

(Title 26, United States Code, Section 7201,  
Title 18, United States Code, Section 2.)

COUNTS FIVE THROUGH THIRTEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, the defendant MICHAEL PAPPADIO, a responsible corporate officer of MBH and Bidio, aided and abetted by The Defendants MATTEO DE LORENZO and



ALPHONSE ESPOSITO, as hereinafter mentioned, unlawfully, willfully and knowingly did make and subscribe Employer's Quarterly Federal Tax Returns (Form 941) for said corporations, which then had their principal places of business in the Southern District of New York, which Returns, verified by written declarations that they were made under the penalties of perjury and filed with the Internal Revenue Service, MICHAEL PAPPADIO did not believe to be true and correct as to every material matter, in that said Returns falsely listed Matteo De Lorenzo or Alphonse Esposito as hereinafter set forth, as salaried employees of said corporations, whereas, as MICHAEL PAPPADIO then and there well knew, Matteo De Lorenzo and Alphonse Esposito were not employees of, and performed no services on behalf of, said corporations or either of them.

| COUNT | DATE OF<br>OFFENSE  | QUARTER             | CORPORATION | WAGES STATED<br>AS PAID | PERSON LISTED<br>(AIDER AND<br>ABETTOR) |
|-------|---------------------|---------------------|-------------|-------------------------|-----------------------------------------|
| 5     | April 30,<br>1969   | 1st Quarter<br>1969 | MBH         | \$6,500.00              | Matteo De Lorenzo                       |
| 6     | July 31,<br>1969    | 2nd Quarter<br>1969 | MBH         | \$1,300.00              | Matteo De Lorenzo                       |
| 7     | April 30,<br>1970   | 1st Quarter<br>1970 | Bidio       | \$7,800.00              | Matteo De Lorenzo                       |
| 8     | October<br>30, 1970 | 3rd Quarter<br>1970 | Bidio       | \$3,450.00              | Alphonse Esposito                       |
| 9     | January<br>26, 1971 | 4th Quarter<br>1970 | Bidio       | \$3,150.00              | Alphonse Esposito                       |
| 10    | April 29,<br>1971   | 1st Quarter<br>1971 | Bidio       | \$3,750.00              | Matteo De Lorenzo                       |
| 11    | April 29,<br>1971   | 1st Quarter<br>1971 | Bidio       | \$4,350.00              | Alphonse Esposito                       |
| 12    | July 29,<br>1971    | 2nd Quarter<br>1971 | Bidio       | \$4,050.00              | Matteo De Lorenzo                       |
| 13    | July 29,<br>1971    | 2nd Quarter<br>1971 | Bidio       | \$3,450.00              | Alphonse Esposito                       |



COUNT FOURTEEN

19a

The Grand Jury further charges:

From on or about October 31, 1970 to on or about January 15, 1971, the defendant, MICHAEL PAPPADIO, who was then President of MBH, unlawfully, wilfully, and knowingly did aid and abet MBH, a corporation not expressly exempt from tax and having its principal place of business at 325 West 37th Street, New York, New York, in the Southern District of New York, and which had received taxable income of approximately \$13,598.15 during its fiscal year ending on October 31, 1970, and which, by reason of said income was required by law, after the close of said fiscal year and on or before January 15, 1971, to make a Federal Corporate Income Tax Return (Form 1120) to the Director of Internal Revenue for the Manhattan District in the Southern District of New York, or to the North Atlantic Service Center, Andover, Massachusetts, stating specifically the items of MBH's gross income and the deductions and credits to which it was entitled, in failing to make said income tax return to said District Director of Internal Revenue, or to said Service Center, or to any other proper officer of the United States.

(Title 26, United States Code, Section 7203;  
Title 18, United States Code, Section 2.)



COUNT FIFTEEN

20a

The Grand Jury further charges:

From on or about August 31, 1971 to on or about November 15, 1971, the defendant, MICHAEL PAPPADIO, who was *then* President of <sup>Bidio</sup> MBH, unlawfully, wilfully, and knowingly did aid and abet Bidio, a corporation not expressly exempt from tax and having its principal place of business at 325 West 37th Street, New York, New York, in the Southern District of New York, and which had received taxable income of approximately \$110,687.75 during its fiscal year ending on August 31, 1971, and which, by reason of said income was required by law, after the close of said fiscal year and on or before November 15, 1971, to make a Federal Corporate Income Tax Return (Form 1120) to the Director of Internal Revenue for the Manhattan District in the Southern District of New York, or to the North Atlantic Service Center, Andover, Massachusetts, stating specifically the items of <sup>Bidio's</sup> ~~MBH's~~ gross income and the deductions and credits to which it was entitled, in failing to make said income tax return to said District Director of Internal Revenue, or to said Service Center, or to any other proper officer of the United States.

(Title 26, United States Code, Section 7203;  
Title 18, United States Code, Section 2.)



COUNTS SIXTEEN THROUGH NINETEEN

21a

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, MATTEO DE LORENZO, the defendant, aided and abetted by the defendant MICHAEL PAPPADIO, unlawfully, willfully and knowingly did make, and cause to be made, and did subscribe to, an Individual Income Tax Return (Form 1040) for each of the calendar years hereinafter set forth, and with respect to the calendar years 1970 and 1971, did attach thereto a Wage and Tax Statement, (Form W-2), which Returns were verified by written declarations that they were made under the penalties of perjury, and which were filed with the Internal Revenue Service, and which Returns MATTEO DE LORENZO did not believe to be true and correct as to every material matter, in that said Returns falsely listed his occupation as "salesman" and his employer as hereinafter set forth, each of which was located at 325 West 37th Street, New York, New York, whereas, as MATTEO DE LORENZO then and there well knew, he was neither employed as a salesman, nor performed services, for said corporations.

| <u>COUNT</u> | <u>DATE</u>    | <u>CALENDAR<br/>YEAR</u> | <u>CORPORATION</u> | <u>EMPLOYER<br/>LISTED ON</u>               |
|--------------|----------------|--------------------------|--------------------|---------------------------------------------|
| 16           | April 1, 1969  | 1968                     | MBH                | Form 1040                                   |
| 17           | March 19, 1970 | 1969                     | MBH                | Form 1040                                   |
| 18           | March 22, 1971 | 1970                     | Bidio              | Wage and Tax<br>Tax Statement<br>(Form W-2) |
| 19           | March 31, 1972 | 1971                     | Bidio              | Wage and<br>Tax Statement<br>(Form W-2)     |

(Title 26, United States Code, Section 7206(1).)



The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, ALPHONSE ESPOSITO, the defendant, aided and abetted by the defendant MICHAEL PAPPADIO, unlawfully, willfully and knowingly did make, and cause to be made, and did subscribe to an Individual Income Tax Return (Form 1040) for each of the calendar years hereinafter set forth, which Returns were verified by written declarations that they were made under the penalties of perjury, and which were filed with the Internal Revenue Service, and which Returns ALPHONSE ESPOSITO did not believe to be true and correct as to every material matter, in that said Returns falsely listed his occupation as "salesman" and the attached Wage and Tax Statements (Form W-2) falsely listed his employer as Bidio Mgt. Corp., 324 West 37th Street, New York, New York, whereas, as ALPHONSE ESPOSITO then and there well knew, he was not employed as a salesman for Bidio and performed no services for Bidio.

| <u>COUNT</u> | <u>DATE</u> | <u>CALENDAR YEAR</u> |
|--------------|-------------|----------------------|
| 20           | 1970        | April 14, 1971       |
| 21           | 1971        | April 11, 1972       |

(Title 26, United States Code, Section 7206(1).)

COUNT TWENTY-TWO

The Grand Jury further charges:

On or about July 6, 1971, in the Southern District of New York, ALPHONSE ESPOSITO, the defendant, unlawfully, wilfully and knowingly did make false statements upon a loan application he submitted to the American Bank & Trust Company, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said bank, thereupon, in that he



stated, and certified as true and correct, that he was employed by "Bidio Mgmt. Corp" and that his occupation was "salesman", whereas, in truth and in fact, as he then and there well knew, said statements were untrue.

(Title 18, United States Code, Section 1014.)

Serald T. MacDonagh  
FOREIGN

Paul J. Curran  
PAUL J. CURRAN  
United States Attorney

OK  
DW

A TRUE COPY  
RAYMOND F. BURCHARDT, Clerk

By E. B. Burton  
Deputy Clerk



REDACTED INDICTMENT (Filed August 24, 1977)  
 UNITED STATES DISTRICT COURT (pp. 24a-32a)  
 SOUTHERN DISTRICT OF NEW YORK

24a

----- x

UNITED STATES OF AMERICA, :

- v - :

MATTEO DE LORENZO, and :  
MICHAEL PAPPADIO, :

Defendants. :

----- x

INDICTMENT

75 CR 472

**FILED**  
 IN CLERK'S OFFICE  
 U. S. DISTRICT COURT E.D. N.Y.

★ AUG 24 1977 ★

TIME A.M. ....  
 P.M. ....

INTRODUCTION

1. At all relevant times herein MICHAEL PAPPADIO was officer and stockholder of, and an authorized signator on payroll and checking accounts for, M.B.H. Sales, Inc. (hereinafter referred to as "MBH"), a New York corporation, and Bidio Management Corp. (hereinafter referred to as "Bidio"), a New York corporation.

2. At all relevant times the principal place of business of MBH and of Bidio was 325 West 37th Street, New York, New York.

COUNT ONE

The Grand Jury charges:

1. From on or about January 1966 and continuing up to and including January 1973, in the Southern District of New York, and elsewhere, MATTEO DE LORENZO and MICHAEL PAPPADIO, the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly did combine, conspire confederate and agree together and with each other (a) to defraud the United States by impeding, impairing, obstructing and defeating the lawful governmental functions of the Internal Revenue Service of the Treasury Department of the United States in the ascertainment, computation,



assessment, and collection of the revenue, wit: income taxes, and (b) to violate Sections 7201 and 7206(1) of Title 26, United States Code.

2. It was a part of this conspiracy that said defendants and their co-conspirators would unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income taxes due and owing to the United States by MBH and Bidio for the years 1969, 1970 and 1971.

3. Among the means by which said defendants and their co-conspirators would and did carry out this conspiracy were the following:

a. MICHAEL PAPPADIO would and did enter falsely, and cause to be entered falsely, on the payroll and the insurance records for MBH and Bidio, the name of Matteo De Lorenzo as a employee of said corporations.

b. MICHAEL PAPPADIO would and did issue, and cause to be issued, and sign checks payable to Matteo De Lorenzo and drawn on the corporate account and on the corporate payroll accounts of MBH and Bidio;

c. MICHAEL PAPPADIO would and did file, and cause to be filed, Federal Corporate Income Tax Returns (Form 941), on behalf of MBH and Bidio, and would and did indicate falsely and cause to be indicated falsely thereon that MATTEO DE LORENZO was an employee of those corporations and was receiving a salary therefrom which was in payment for services performed for said corporations and which was falsely and fraudulently deducted by MBH and Bidio as "salaries and wages" on the Annual Federal Corporate Income Tax Return (Form 1120);



d. MICHAEL PAPPADIO would and did issue falsely, and cause to be issued falsely, Annual Employee Wage and Tax Statements (Form W-2) on behalf of MBH and Bidio, bearing the name of Matteo De Lorenzo, and MATTEO DE LORENZO would and did file with the Internal Revenue Service these false Annual Employee Wage and Tax Statements listing himself as an employee of MBH and Bidio on his Individual Income Tax Returns (Form 1040); and

e. MATTEO DE LORENZO would and did file, and cause to be filed, Individual Federal Income Tax Returns on which were indicated falsely the source of his income as "salary" received as a "salesman" for MBH and for Bidio, whereas, in truth and in fact, as both MICHAEL PAPPADIO and MATTEO DE LORENZO then and there well knew, MATTEO DE LORENZO performed no services for MBH or Bidio and neither corporation was entitled to deduct such salary payments from income taxable to MBH or to Bidio.

#### OVERT ACTS

4. In pursuance of this conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

a. during 1966 MATTEO DE LORENZO prepared and executed a Employee's Withholding Exemption Certificate (Form W-4) and filed it with MBH, 325 West 37th Street, New York, New York;

b. on or about April 30, 1969 at 325 West 37th Street, New York, New York MICHAEL PAPPADIO subscribed, as Treasurer, to the Employer's Quarterly Federal Tax Return (Form 941) for MBH for the first quarter of 1969;



c. On or about March 21, 1969 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO, as authorized signator of the corporation, signed, and caused to be signed, payroll check number 1485 payable to Matteo De Lorenzo and drawn on the account of MBH;

d. On or about May 2, 1969 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO, as authorized signator of the corporation, signed, and caused to be signed, payroll check number 1656 payable to Matteo De Lorenzo and drawn on the account of MBH;

e. On or about August 22, 1969 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as President, the Federal Corporate Income Tax Return (Form 1120) and supporting schedules for MHB for the fiscal year ending October 31, 1969;

f. on or about March 19, 1970 at 261 Broadway, New York, New York, MATTEO DE LORENZO subscribed to an individual Federal Income Tax Return (Form 1040) for the calendar year 1969;

g. on or about April 30, 1970 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as Treasurer, to the Employers' Quarterly Payroll Tax Return (Form 941) for Bidio for the first quarter of 1970;

h. on or about October 2, 1970 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO, as authorized signator of the corporation, signed, and caused to be signed, payroll check number 106 payable to Matteo De Lorenzo and drawn on the account of Bidio;

i. on or about November 24, 1970 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as President, to the Federal Corporate Income Tax Return (Form 1120) and supporting schedules for Bidio



for the fiscal year ending August 31, 1970:

28a

j. on or about March 22, 1971 at 261 Broadway, New York, New York, MATTEO DE LORENZO subscribed to an Individual Federal Income Tax Return (Form 1040) for the calendar year 1970;

k. on or about April 29, 1971 at 325 West 37th Street, New York, New York, MICHAEL PAPPADIO subscribed, as President, to the Employer's Federal Quarterly Tax Return (Form 941) for Bidio for the first quarter of 1971;

l. on or about July 29, 1971 at 325 West 37th Street, New York, New York MICHAEL PAPPADIO subscribed, as President, to the Employer's Federal Quarterly Tax Return (Form 941) for Bidio for the second quarter of 1971; and

m. on or about July 31, 1971 at 325 West 27th Street, New York, New York, MICHAEL PAPPADIO, as authorized corporate signator, signed and caused to be signed, payroll check number 1372 payable to Matteo De Lorenzo and drawn on the account of Bidio.

(Title 18, United States Code, Section 371).

COUNT THREE

The Grand Jury further charges:

On or about December 24, 1969, the defendant MICHAEL PAPPADIO, a responsible corporate officer of MBH, which then had its principal place of business in the Southern District of New York, aided and abetted by the defendant MATTEO DE LORENZO, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income taxes due and owing by MBH to the United States of America, for MBH's fiscal year ending October



31, 1969, by preparing and causing to be prepared, by signing and causing to be signed, by filing and causing to be filed with the Director, North Atlantic Service Center, Andover, Massachusetts an income tax return wherein it was stated that the taxable income of MBH for said fiscal year was \$48.55 and that there was no tax due thereon, which return was false and fraudulent in that the defendant PAPPADIO then and there well knew that the taxable income of MBH for said fiscal year was approximately \$30,448.55, upon which taxable income there was due and owing to the United States of America an income tax of approximately \$8,814.34.

(Title 26, United States Code, Section 7201;  
Title 18, United States Code, Section 2.)

#### COUNT FOUR

The Grand Jury further charges:

On or about November 24, 1970, the defendant MICHAEL PAPPADIO, a responsible corporate officer of Bidio, aided and abetted by the defendant MATTEO DE LORENZO, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income taxes due and owing by Bidio to the United States of America for Bidio's fiscal year ending August 31, 1970, by preparing and causing to be prepared, by signing and causing to be signed, by filing and causing to be filed with the Director, North Atlantic Service Center, Andover, Massachusetts an income tax return wherein it was stated that the taxable income of Bidio for said fiscal year was \$92.40 and that the total amount of tax due thereon was \$22.36, which return



was false and fraudulent in that the defendant PAPPADIO then and there well knew that the taxable income of Bidio for said fiscal year was approximately \$21,542.40, upon which taxable income there was due and owing to the United States of America an income tax of approximately \$5,015.16.

(Title 26, United States Code, Section 7201,  
Title 18, United States Code, Section 2.)

COUNT FIVE THROUGH SEVEN, TEN AND TWELVE

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, the defendant MICHAEL PAPPADIO, a responsible corporate officer of MBH and Bidio, aided and abetted by the defendant MATTEO DE LORENZO as hereinafter indicated, unlawfully, willfully and knowingly did make and subscribe Employer's Quarterly Federal Tax Returns (Form 941) for said corporations, which then had their principal places of business in the Southern District of New York, which Returns, verified by written declarations that they were made under the penalties of perjury and filed with the Internal Revenue Service, MICHAEL PAPPADIO did not believe to be true and correct as to every material matter, in that said Returns falsely listed Matteo De Lorenzo as hereinafter set forth, as a salaried employee of said corporations, whereas, as MICHAEL PAPPADIO then and there well knew, Matteo De Lorenzo was not an employee of, and performed no services on behalf of, said corporations or either of them.



31a

| <u>COUNT</u> | <u>DATE OF<br/>OFFENSE</u> | <u>QUARTER</u>      | <u>CORPORATION</u> | <u>WAGES STATED<br/>AS PAID</u> | <u>PERSON LISTED<br/>(AIDER AND<br/>ABETTOR)</u> |
|--------------|----------------------------|---------------------|--------------------|---------------------------------|--------------------------------------------------|
| 5            | April 30,<br>1969          | 1st Quarter<br>1969 | MBH                | \$6,500.00                      | Matteo De Lorenzo                                |
| 6            | July 31,<br>1969           | 2nd Quarter<br>1969 | MBH                | \$1,300.00                      | Matteo De Lorenzo                                |
| 7            | April 30,<br>1970          | 1st Quarter<br>1970 | Bidio              | \$7,800.00                      | Matteo De Lorenzo                                |
| 10           | April 29,<br>1971          | 1st Quarter<br>1971 | Bidio              | \$3,750.00                      | Matteo De Lorenzo                                |
| 12           | July 29,<br>1971           | 2nd Quarter<br>1971 | Bidio              | \$4,050.00                      | Matteo De Lorenzo                                |

COUNTS SEVENTEEN THROUGH NINETEEN

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, MATTEO DE LORENZO, the defendant, aided and abetted by the defendant MICHAEL PAPPADIO, unlawfully, willfully and knowingly did make, and cause to be made, and did subscribe to, an Individual Income Tax Return (Form 1040) for each of the calendar years hereinafter set forth, and with respect to the calendar years 1970 and 1971, did attach thereto a Wage and Tax Statement, (Form W-2), which Returns were verified by written declarations that they were made under the penalties of perjury, and which were filed with the Internal Revenue Service, and which Returns MATTEO DE LORENZO did not believe to be true and correct as to every material matter, in that said Returns falsely listed his occupation as "salesman" and his employer as hereinafter set forth, each of which was located at 325 West 37th Street, New York, New York, whereas, as MATTEO DE LORENZO then and there knew, he was neither employed as a salesman, nor performed services, for said corporations.



| <u>COUNT</u> | <u>DATE</u>    | <u>CALENDAR<br/>YEAR</u> | <u>CORPORATION</u> | <u>EMPLOYER<br/>LISTED ON</u>           |
|--------------|----------------|--------------------------|--------------------|-----------------------------------------|
| 17           | March 19, 1970 | 1969                     | MBH                | FORM 1040                               |
| 18           | March 22, 1971 | 1970                     | Bidio              | Wage and Tax<br>Statement<br>(Form W-2) |
| 19           | March 31, 1972 | 1971                     | * Bidio            | Wage and Tax<br>Statement<br>(Form W-2) |

(Title 26, United States Code, Section 7206(1).)

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FOREMAN

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PAUL J. CURRAN  
United States Attorney



## MEMORANDUM AND ORDER OF JUDGE NEAHER

(Dated July 2, 1976)

(pp. 33a-45a)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA

-against-

MATTEO DE LORENZO, ALPHONSE  
ESPOSITO, and MICHAEL PAPPADIO,

Defendants.

472  
75 CR-410

MEMORANDUM  
AND  
ORDER

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APPEARANCES:

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NEAHER, District Judge.

This twenty-two count indictment charges three  
defendants, Michael Pappadio, Matteo De Lorenzo and Alphonse  
Esposito, with two separate conspiracies to defraud the



United States by filing false individual and corporate income tax returns in the years 1966-1975. The indictment charges that Pappadio, an officer and stockholder of M.B.H. Sales, Inc. (MSH) and Bideo Management Corporation (Bideo), filed tax returns for both corporations for the years in question deducting as a business expense "salaries" paid De Lorenzo and Esposito as corporate employees when in fact they performed no services for either corporation.

De Lorenzo is charged with having participated in the conspiracy with Pappadio from January 1966 until January 1973 (Count One); Esposito is charged with participation in the conspiracy with Pappadio from January 1970 until April 1975 (Count Two). Count Three charges Pappadio, as principal, and De Lorenzo as an aider and abettor, with the substantive crime of filing a false tax return for MSH for the fiscal year 1969. Count Four, the only count in which all three defendants are named, charges Pappadio as principal and both De Lorenzo and Esposito as aiders and abettors, with filing a false tax return for Bideo for fiscal year 1970. Counts Five through Thirteen charge Pappadio as principal and both De Lorenzo and Esposito as aiders and abettors with filing false quarterly corporate returns as follows:



| <u>Count</u> | <u>Quarter</u> | <u>Corporation</u> | <u>Aider and Abettor</u> |
|--------------|----------------|--------------------|--------------------------|
| 5            | 1st Qtr 1969   | MSH                | De Lorenzo               |
| 6            | 2nd " "        | "                  | De Lorenzo               |
| 7            | 1st " 1970     | Sideo              | De Lorenzo               |
| 8            | 3rd " "        | "                  | Esposito                 |
| 9            | 4th " "        | "                  | Esposito                 |
| 10           | 1st " 1971     | "                  | De Lorenzo               |
| 11           | " " "          | "                  | Esposito                 |
| 12           | 2nd " 1971     | "                  | De Lorenzo               |
| 13           | " " "          | "                  | Esposito                 |

Counts Sixteen through Nineteen charge De Lorenzo as principal and Pappadio as an aider and abettor with filing false individual income tax returns for the years 1968-1971. Counts Twenty and Twenty-one charge Esposito as principal and Pappadio as an aider and abettor with filing false individual tax returns in 1970 and 1971.

Both Esposito and De Lorenzo now move under Rule 8(b) and 14, F.R.Crim.P., for a severance of those counts in which only one of them is charged and for a separate trial on those counts. Pappadio moves to dismiss the entire indictment or in the alternative to dismiss Counts Five, Fourteen and Fifteen.<sup>1</sup>



Discussion

The theory of the prosecution is that Pappadio, a 50% stockholder in both MEH and Bideo, caused those corporations to avoid income tax rightfully due by listing on its books and records and deducting on its tax returns monies paid to De Lorenzo and Esposito, purportedly as salaries. There is apparently no question that the monies were actually paid by MEH and Bideo and that De Lorenzo and Esposito did report amounts received as income from salaries on their individual tax returns.

The government contends, however, that "neither De Lorenzo nor Esposito actually performed any legitimate services for MEH or Bideo and were, therefore, not entitled to any such compensation." As explained by the government, the intended results of this scheme were twofold: (1) to permit Pappadio to reduce MEH and Bideo's taxable income, and (2) to provide De Lorenzo and Esposito with a seemingly legitimate source of income. According to the government, De Lorenzo and Esposito aided and abetted Pappadio by filing false individual tax returns which tended to corroborate the salary deductions taken by MEH and Bideo. Pappadio, in



turn, aided and abetted De Lorenzo and Esposito by supplying them with W-2 forms reflecting monies paid them, which they attached to their individual returns.

### Severance

#### Rule 8(b)

Defendants De Lorenzo and Esposito contend that their joinder in one indictment was improper under Rule 8(b)<sup>2</sup> and that consequently they are entitled to a severance as a matter of law. They argue that since there is no overall conspiracy count, all three defendants cannot be said to have been charged with participation "in the same act or transactions or in the same series of acts or transactions constituting an offense or offenses." Rule 8(b).

Two or more conspiracies may, however, be properly joined under Rule 8, if they are sufficiently related. United States v. Borelli, 336 F.2d 376, 387 (2 Cir. 1964); United States v. Varelli, 407 F.2d 735, 747 (7 Cir. 1969), cert. denied, 405 U.S. 1040 (1972). Here, although there is no contention that De Lorenzo and Esposito agreed inter sese to participate with Pappadio to promote both his and their



interests, hence the need to allege two separate conspiracies, their individual association with Pappadio's solitary ongoing scheme, as charged, constitutes a sufficient nexus to warrant joinder under Rule 8. Cf. United States v. Crockett, 514 F.2d 64, 70 (5 Cir. 1975).

The entire scheme centered on Pappadio and the two corporations he controlled, Bideo and MBH. Both Esposito and De Lorenzo are charged separately with substantive counts relating to several of Bideo's 1970 and 1971 quarterly tax returns (Counts Seven-Thirteen) and they are jointly charged with respect to Bideo's 1970 annual tax return (Count Four). Thus, there is a closely-linked factual nucleus, i.e., Bideo's 1970 and 1971 tax returns, around which the balance of the charges rotate. The conspiracies are not in any real sense distinct or independent but are part of a common scheme or plan. United States v. Scott, 413 F.2d 932, 935 (7 Cir. 1969). Stated otherwise, this is not an attempt by the government to try together "numerous defendants who are only loosely connected in a criminal enterprise." United States v. Milay, 513 F.2d 1191, 1195 (2 Cir. 1975).

Accordingly, the court concludes that the two



conspiracies are sufficiently related to warrant joinder in one indictment.<sup>3</sup> See United States v. Thomas Apothecary, Inc., 266 F. Supp. 890, 892 (S.D.N.Y. 1967).

#### Rule 14

Given proper joinder under Rule 8, the next question is whether the court should exercise its discretion under Rule 14<sup>4</sup> and grant defendants a severance. Both moving defendants contend that they will be prejudiced by the introduction of evidence against the other concerning time periods when they were non-participants in any conspiracy. Esposito's contention is somewhat stronger than De Lorenzo's since the latter's involvement with Pappadio is alleged to go back as far as 1967, whereas his involvement did not commence until 1970.

Nonetheless, the court believes that the issues raised are sufficiently simple that, with the aid of appropriate limiting instructions, no "spill-over" will occur. While there remain 19 counts to be tried, see note 1, supra, the government's proof is likely to be largely documentary, i.e., tax returns and W-2 forms,<sup>5</sup> the principal live testimony



will probably relate to the government's contention that De Lorenzo and Esposito performed no substantial services for MHH or Bideo. Under these circumstances, it is unlikely that the jury will have difficulty following the proof as it relates independently to each defendant.

On the other hand, the interests of judicial economy would be ill-served by requiring the government to introduce the same proof, i.e., that relating to Pappadio, MHH and Bideo, at two separate trials.

Finally, the court is mindful of its continuing obligation "at all stages of the trial to grant a severance if prejudice does appear." Schaffer v. United States, 362 U.S. 511, 516 (1960).

Accordingly, defendants' severance motions are denied at this time.

#### Multiplicity

Citing Rule 7(c), F.R.Crim.P., Esposito moves to dismiss certain counts of the indictment as multiplicitous. The thrust of his motion is that since the government contends that he received a "salary" but performed no services for



Bideo as part of an overall scheme to defraud the government, there is no need to charge him with a separate substantive offense each time a required tax form was filed (Counts Eight, Nine, Eleven and Thirteen); rather, the separate filings should be listed as overt acts of the overall conspiracy.

Initially, it seems clear that the government may properly charge a defendant both with conspiracy and individual substantive offenses constituting independent crimes. Here, each filing of an allegedly false return is a separate act constituting a separate substantive offense and properly chargeable as such. Thus, the indictment here is not multiplicitous, as was the indictment in United States v. Mamber, 127 F. Supp. 925 (D. Mass. 1955), cited by Esposito, where the indictment contained nine separate substantive counts, all stemming from one allegedly false answer given by the defendant on a Navy enlistment application.

Moreover, as Esposito himself points out, the theory of the government's case rests on the factual proposition that he did not work for Bideo. Thus, if the jury believes otherwise, they will perforce acquit on those counts



representing quarters during which they find he did perform services for Bideo. The court perceives no prejudice arising from the form of the indictment and this motion is also denied.

### Dismissal

Pappadio moves to dismiss the entire indictment on the ground that "the prosecution was brought an unreasonably oppressive and unjustifiable time after the alleged offenses, in violation of the rights of the defendant under the . . . Fifth . . . and Sixth Amendment, to due process and a speedy trial." This contention rests on Pappadio's assertion that the government had knowledge of the facts of the case since 1971 and did not seek an indictment until 1975. Pappadio concedes an absence of particularized prejudice from the claimed delay but argues that the unreasonable delay per se subjects the indictment to dismissal. This is simply not the law under either amendment, United States v. Marion, 404 U.S. 307 (1971); United States v. Frank, 520 F.2d 1287, 1292 (2 Cir. 1975), cert. denied, 96 S.Ct. 878 (1976); United States v. Mallah, 503 F.2d 971, 989 (2 Cir. 1974), cert. denied, 420 U.S. 995 (1975), and it is thus unnecessary to explore further the underlying factual contention.



Accordingly, Peppadio's motion to dismiss the  
indictment is denied.<sup>6</sup>

SO ORDERED.

/s/ EDWARD R. NEAHER  
U. S. D. J.

Dated: Brooklyn, New York  
July 2, 1976



F O O T N O T E S

- 1 The government has consented to the severance of Counts Fourteen, Fifteen and Twenty-two. Pappadio's motion to dismiss Counts Fourteen and Fifteen for failure to state an offense is denied. Cf. United States v. George F. Fish, Inc., 154 F.2d 798, 801 (2 Cir.), cert. denied, 328 U.S. 869 (1946).
- 2 Rule 8(b) provides:

"(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."
- 3 Moreover, even if a severance were granted, the government would still be able to introduce similar act evidence against Pappadio, under a limiting instruction, at either De Lorenzo's or Esposito's separate trial with Pappadio.
- 4 Rule 14 provides in pertinent part:

"If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires."



- 5 Counsel for Esposito conceded as much in his affidavit submitted in support of a discovery motion:

This is essentially a documents case charging tax violations and a conspiracy to defraud."

Affidavit of Jay Goldberg, dated Sept 18, 1975 at 1.

- 6 Pappadio's motion to dismiss Count Five of the indictment as barred by the statute of limitations is also denied since the indictment was returned within six years of the date of the offense charged. 26 U.S.C. §6531.



(Jury enters jury box.)

THE COURT: Good afternoon, members of the jury:

We are now at the stage of trial where you are about to undertake your final function as jurors. Your duty is a serious and important one. In performing it, you actually share with the Court the responsibility of administering justice according to law and the evidence in the case. Your oath as jurors obliges you to discharge the final task in an attitude of complete fairness and impartiality -- and, as was emphasized by me when you were selected as jurors -- without bias or prejudice, for or against the Government or the defendants as parties to this controversy.

The case is important to the Government, since the enforcement of the criminal laws is of prime importance to the welfare of the community.

Obviously, it is equally important to the defendants, who are charged with a serious crime and have the right to receive a fundamentally fair trial -- the community has an interest in that, too.

Let me add: The fact that the Government is a party entitles it to no greater consideration than that accorded to any other party to a litigation.



1  
2 By the same token, it is entitled to no less  
3 consideration. All parties, Government and individuals  
4 alike, stand as equals before the bar of justice.

5 Your final role is to decide and pass upon the  
6 fact issues in the case. You are the sole and  
7 exclusive judges of the facts. You determine the  
8 weight of the evidence; you appraise the credibility of  
9 the witnesses; you draw the reasonable inferences from  
10 the evidence; you resolve such conflicts as there may  
11 be in the evidence. I shall later refer to how you  
12 determine the credibility of witnesses.

13 My final function is to instruct you as to the  
14 law and it is your duty to accept these instructions  
15 as to the law and to apply them to the facts as you  
16 may find them. With respect to any fact matter, it is  
17 your recollection, and yours alone that governs.

18 As I have already told you, anything that  
19 counsel, either for the Government or the defense, may  
20 have said with respect to matters in evidence, whether  
21 during the trial, in a question, in argument or in  
22 summation, is not to be substituted for your own  
23 recollection of the evidence.

24 So, too, anything the Court may have said  
25 during the trial, or may refer to during the course of



1  
2 these instructions, as to any matter in evidence, is  
3 not to be taken in lieu of your own recollection.

4 There are certain principles of law which apply  
5 in every criminal case, and to which I made reference  
6 and emphasized at the time of your selection as jurors.  
7 I repeat them now.

8 The indictment is merely an accusation, a  
9 charge. It is no evidence of proof of a defendant's  
10 guilt.

11 Each defendant on trial has pleaded not guilty.  
12 Thus, the Government has the burden of proving the  
13 charges against each defendant beyond a reasonable  
14 doubt. They do not have to prove their innocence. On  
15 the contrary, they are presumed to be innocent of the  
16 accusations contained in the indictment. This  
17 presumption of innocence was in their favor at the  
18 start of the trial, continued in their favor throughout  
19 the entire trial, is in their favor even as I instruct  
20 you now and remains in their favor during the course  
21 of your deliberations in the jury room. It is removed  
22 only if and when you are satisfied the Government has  
23 sustained its burden of proving the guilt of each  
24 defendant beyond a reasonable doubt.

25 The question that naturally comes up is, what is



1 a reasonable doubt? The words almost define themselves  
2 -- that there is a doubt founded in reason and arising  
3 out of the evidence in the case, or the lack of  
4 evidence. It is a doubt which a reasonable person has  
5 after carefully weighing all the evidence. Reasonable  
6 doubt is a doubt which appeals to your reason, your  
7 judgment, your common sense, and your experience. It  
8 is not caprice, whim, speculation, conjecture or  
9 suspicion; it is not an excuse to avoid the performance  
10 of an unpleasant duty; it is not sympathy for a  
11 defendant.  
12

13 If, after a fair and impartial consideration  
14 of all of the evidence, you can, candidly and honestly  
15 say you are not satisfied of the guilt of a defendant,  
16 that you do not have an abiding conviction of his  
17 guilt -- in sum, if you have such a doubt as would  
18 cause you, as prudent persons, to hesitate before  
19 acting in matters of importance to yourselves, then  
20 you have a reasonable doubt, and in that circumstance  
21 it is your duty to acquit.

22 On the other hand, if after such an impartial  
23 and fair consideration of all the evidence, you can,  
24 candidly and honestly, say you do have an abiding  
25 conviction of a defendant's guilt, such a conviction as



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2 you would be willing to act upon, in important and  
3 weighty matters in the personal affairs of your own  
4 life, then you have no reasonable doubt, and under such  
5 circumstances, it is your duty to convict.

6 One final word on the subject. Reasonable  
7 doubt does not mean a positive certainty or beyond all  
8 possible doubt. If that were the rule, few persons,  
9 however guilty they might be, would be convicted.

10 It is practically impossible for a person to  
11 be absolutely and completely convinced of any  
12 controverted fact, which by its nature is not  
13 susceptible of mathematical certainty.

14 In consequence, the law in a criminal case is  
15 that it is sufficient if the guilt of a defendant is  
16 established beyond a reasonable doubt -- not beyond all  
17 possible doubt.

18 Before we consider the charges against the  
19 defendants on trial, I remind you that for reasons  
20 which are not to concern you, you are not going to be  
21 asked to decide the case as to the defendant Esposito,  
22 and you are not to speculate about him in your  
23 deliberations. You are now only to decide whether  
24 the Government has met its burden of proving the guilt  
25 of the defendants Pappadio and DeLorenzo.

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2 Now let us turn to the charges against the  
3 defendants on trial. I read the indictment to you at  
4 the start of the trial and do not consider it necessary  
5 to re-read it to you at this time. A copy is available  
6 should you wish to examine it for yourself. Rather,  
7 I will summarize the allegations of the indictment as  
8 they relate to the defendants on trial in light of the  
9 evidence as it has now developed in the case.

10 As the indictment now stands, you will have to  
11 consider eleven separate counts.

12 Count 1 of the indictment is based upon a  
13 federal statute which makes it a crime for two or more  
14 persons to conspire to commit any offense against the  
15 United States, provided that one or more of such  
16 persons did any act to effect the object of the  
17 conspiracy.

18 In count 1, the defendants Pappadio and  
19 DeLorenzo are charged with conspiring to defraud the  
20 United States by unlawfully, willfully and knowingly  
21 engaging in a course of conduct having as its object  
22 the evasion of corporate income taxes due and owing by  
23 MBH Sales, Incorporated, which I will hereinafter  
24 refer to simply as MBH, and Bidio Management Corp.,  
25 which I will hereinafter refer to simply as Bidio,



## Charge

both New York corporations.

The remaining counts of the indictment charge the various substantive violations of law allegedly committed by the defendants in furtherance of the scheme charged as a conspiracy in count 1.

Thus, counts 3 and 4 charge that Pappadio, aided and abetted by DeLorenzo, caused the preparation and filing of corporate income tax returns, which he signed on behalf of MBH and Bidio, relating to their respective fiscal years ending November 31, 1969 and August 31, 1970, which indicated that either no tax or a small amount of tax was due, whereas, in fact, each corporation had substantial income on which substantial income tax was due.

Counts 5, 6, 7, 10 and 12 charge that between April 30, 1969 and July 29, 1971, Pappadio, aided and abetted by DeLorenzo, made and signed employer's quarterly federal tax returns, Form 941 for MBH and Bidio, which were made under the penalties of perjury as verified written declarations, which he did not believe to be true and correct as to every material matter, since they listed DeLorenzo as a salaried employee of those corporations when as Pappadio well knew, DeLorenzo was not an employee of



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2 and performed no services on behalf of either of said  
3 corporations.

4 Counts 17, 18 and 19 charge that DeLorenzo  
5 aided and abetted by Pappadio, signed and filed  
6 individual income tax returns, Form 1040, for each  
7 of the calendar years 1970, 1971 and 1972, which were  
8 verified by written declarations that they were made  
9 under penalties of perjury, and which DeLorenzo did  
10 not believe to be true and correct as to every  
11 material matter in that said returns falsely listed his  
12 occupation as "salesman" and his employer as either  
13 MBH or Bidio, whereas he then and there knew he was  
14 neither employed as a salesman nor performed services  
15 for said corporations.

16 Thus far, I have just given you an overview of  
17 the indictment. Now we will return to count 1, which  
18 charges defendants with the commission of the crime  
19 of conspiracy.  
20

21 (continued next page)  
22  
23  
24  
25



1  
2 THE COURT: (Continuing) What do we mean by  
3 "conspiracy"?

4 A conspiracy is simply a combination or agree-  
5 ment of two or more persons to accomplish an unlawful  
6 purpose by their concerted action. Conspiracy is an  
7 offense separate from the commission of any offenses  
8 that may have been committed pursuant to the conspiracy.  
9 That is because the formation of a conspiracy, of a  
10 partnership in criminal purposes as it is sometimes  
11 called, is in and of itself pronounced a crime by the  
12 statute.

13 The essence of the charge of conspiracy is first,  
14 an understanding among two or more persons that they  
15 will act together to accomplish a common objective  
16 which they know is unlawful, plus, second, the doing  
17 of an overt act by one of those persons in furtherance  
18 of the conspiracy. The understanding does not have to  
19 be a formal or express one. The understanding  
20 essential to the finding of a conspiracy exists if by  
21 whatever means, tacit or outspoken, the alleged  
22 members of the alleged conspiracy have arranged to  
23 unite their several efforts to accomplish a common  
24 object that they know is unlawful.

25 The overt act required to be proved may be an

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2 act which, considered by itself, is an innocent act,  
3 such as making a telephone call or signing a check to  
4 carry out some purpose connected with the objective of  
5 the conspiracy.

6 One may become a member of a conspiracy without  
7 having full knowledge of all of the details of the  
8 conspiracy. But a person who, having no knowledge of  
9 a conspiracy, acts in a way which furthers some object  
10 of the conspiracy, does not thereby become a  
11 conspirator. Mere association of a defendant with an  
12 alleged conspirator does not establish his  
13 participation in a conspiracy, nor is knowledge  
14 without participation sufficient.

15 To sum up, three essential elements are required  
16 to be proved by the Government beyond a reasonable  
17 doubt in order to establish the offense of conspiracy  
18 as charged in count 1 of the indictment:

19 First, that the conspiracy described was  
20 unlawfully, willfully and knowingly formed by  
21 Pappadio and DeLorenzo and was existing at or about the  
22 times alleged;

23 Second, that the object of the conspiracy was  
24 to commit an unlawful act, that is, to defraud the  
25 United States in respect of the income taxes properly



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2 due and owing by MBH and Bidio;

3 Third, that at least one of the conspirators  
4 committed an overt act, that is, knowingly and willfully  
5 did something to further the object of the conspiracy.

6 With respect to the first element, the formation  
7 of the conspiracy, you must find beyond a reasonable  
8 doubt that both defendants entered into the alleged  
9 unlawful scheme.

10 If you are not satisfied by the Government's  
11 proof as to either defendant, then both must be  
12 acquitted of the conspiracy charge.

13 You will also note that the words "unlawfully,"  
14 "willfully" and "knowingly" are used in connection  
15 with both the formation of the conspiracy and a  
16 particular defendant's association therewith. Taking  
17 those terms in reverse order, an act is done  
18 "knowingly," if it is done voluntarily and intentionally,  
19 and not because of mistake or accident or other  
20 innocent reason. An act is done "willfully," if done  
21 voluntarily and intentionally, and with the specific  
22 intent to do something the law forbids; that is to say,  
23 with bad purpose either to disobey or to disregard the  
24 law. "Willfully" and "unlawfully" have substantially  
25 the same meaning. All those words are used in the

1  
2 indictment to ensure that a defendant should not be  
3 convicted for an act done because of mistake, accident  
4 or inadvertence.

5 Before you may find a defendant participated  
6 in a conspiracy, you must find beyond a reasonable  
7 doubt that in some way he knowingly and willfully  
8 associated himself with the venture and thought by his  
9 actions to make it succeed. If he did not, then he  
10 must be acquitted of the conspiracy charge.

11 Now, let us return to the remaining counts, which  
12 charge various substantive offenses constituting the  
13 means by which the defendants are alleged to have  
14 carried out the conspiracy charged in count 1. Those  
15 counts are based on one or the other of two federal  
16 statutes forming part of the Internal Revenue Code of  
17 the United States.

18 Section 7201 of the Internal Revenue Code  
19 provides in part that "Any person who willfully  
20 attempts in any manner to evade or defeat any tax  
21 imposed" under the Internal Revenue laws "shall be  
22 guilty" of an offense against the laws of the United  
23 States.

24 The other statute is Section 7206(1) of the  
25 Internal Revenue Code, which provides as follows:



1  
2 "Any person who willfully makes and subscribes  
3 any return, statement, or other document, which  
4 contains or is verified by a written declaration that  
5 it is made under the penalties of perjury, and which  
6 he does not believe to be true and correct as to  
7 every material matter...shall be guilty of a felony..."

8 As previously indicated, count 3 charges the  
9 defendant Pappadio with attempting to evade and defeat  
10 a large part of the income taxes due and owing by MBH  
11 for the fiscal year ending October 31, 1969, in  
12 violation of Section 7201 of the Internal Revenue Code  
13 which I have just quoted for you.

14 Specifically, it is alleged that on or about  
15 December 24, 1969, Pappadio caused to be prepared and  
16 signed and filed an income tax return stating that the  
17 taxable income of MBH for that fiscal year was \$48.55  
18 and there was no tax due, when he well knew that the  
19 corporation's taxable income for that fiscal year was  
20 approximately \$30,448.55, upon which there was due and  
21 owing an income tax of approximately \$8,814.34.

22 To establish the crime of income tax evasion,  
23 as charged in count 3, the Government must prove  
24 beyond a reasonable doubt that the defendant Pappadio  
25 willfully attempted to evade or defeat the tax due the  
Government from MBH. This involves the specific

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2 intent to evade the tax, and some willful commission  
3 or affirmative action by the defendant in furtherance  
4 of that intent.

5 Three essential elements are required to be  
6 proved beyond a reasonable doubt in order to establish  
7 the offense charged in count 3:

8 First, that a substantial additional amount of  
9 federal income tax was in fact due and owing from MBH  
10 for the fiscal year ending October 31, 1969, over and  
11 above the amount of the tax which was declared or  
12 disclosed in the corporation's income tax return for  
13 that calendar year;

14 Second, knowledge on the part of Pappadio that  
15 some additional income tax of a substantial amount was  
16 due and owing from MBH to the Government for the  
17 fiscal year mentioned, over and above the amount of  
18 tax which was declared or disclosed in the corporate  
19 income tax return he signed and filed for that  
20 calendar year;

21 Third, that the defendant Pappadio willfully  
22 attempted, in some manner, to evade or defeat such  
23 additional tax with the specific intent to defraud the  
24 Government of such additional tax.

25 On the question of intent to evade and defeat



1  
2 income taxes, there are certain matters which you may  
3 consider as pointing to such intent, if you find that  
4 they exist in this case. If you find, for example,  
5 that false entries were placed in the records of the  
6 corporation, regarding the employment of DeLorenzo,  
7 you may infer intent to evade taxes. And if the tax  
8 evasion motive plays any part in such conduct, the  
9 offense may be made out, even though the conduct I  
10 have mentioned might also serve some other purpose.

11 It is the Government's contention that Pappadio  
12 created fictitious business deductions for MBH by  
13 placing DeLorenzo on the corporate payroll, causing  
14 payroll checks to be issued in his name, filing  
15 quarterly employer returns listing him as an employee,  
16 and causing the issuance of W-2 wage statements  
17 indicating that DeLorenzo paid a substantial salary by  
18 the corporation, when in fact DeLorenzo performed no  
19 such services.

20 Count 4 of the indictment makes substantially  
21 similar allegations with respect to the preparation  
22 and filing of the corporate income tax return on  
23 behalf of Bidio on or about November 24, 1970, which  
24 related to Bidio's fiscal year ending August 31, 1970.  
25 That return shows taxable income of Bidio was \$92.40 and

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2 total tax due thereon \$22.36, when the Government  
3 alleges Pappadio knew that Bidio had income of  
4 approximately \$21,542.40, on which the income tax due  
5 was approximately \$5,015.16. To establish the offense  
6 charged in count 4, the Government would have to show  
7 the same elements previously described and prove  
8 beyond a reasonable doubt the acts the Government  
9 alleges constituted the fraud and tax evasion.

10 As I have already stated, the burden is always  
11 upon the Government to prove beyond a reasonable  
12 doubt every essential element of the crime charged;  
13 the law never imposes upon a defendant in a criminal  
14 case the burden or duty of calling any witnesses or  
15 producing any evidence.

16 Now, in connection with the Government's  
17 evidence, it is not necessary for the proof to show  
18 an evasion of all the tax alleged in the indictment,  
19 but it must establish beyond a reasonable doubt that  
20 the defendant willfully attempted to evade or defeat  
21 some substantial portion of the tax alleged, as  
22 charged.

23  
24 (continued next page)  
25



1  
2 THE COURT: (Continuing) Every corporation  
3 subject to income taxation under the Internal Revenue  
4 Code is required to make a return stating specifically  
5 the items of its gross income and the deductions and  
6 credits allowed by law. The return must be sworn to  
7 by the president or other principal official. Under  
8 Section 6064 of the Internal Revenue Code, the fact  
9 that an individual's name is signed to a return consti-  
10 tutes prima facie evidence for all purposes that the  
11 return was actually signed by him, which is to say  
12 that, unless and until outweighed by evidence in the  
13 case which leads to a different or contrary conclusion,  
14 the jury may find that a filed tax return was in fact  
15 signed by the person whose name appears to be signed  
16 to it. This applies, of course, not only to corporate  
17 tax returns signed by officials but also to individual  
18 tax returns signed by those who file them.

19 Whenever it appears beyond a reasonable doubt  
20 from the evidence in the case that a defendant signed  
21 a tax return, you may draw the inference and find that  
22 the defendant had knowledge of the contents of the  
23 return.

24 It is the Government's contention in this case  
25 that the defendants attempted willfully to evade and

1  
2 defeat corporate income taxes due and payable by over-  
3 stating lawful deductions in the form of salaries paid  
4 to an employee when he was not an employee.

5 The term "deduction" means any item allowed by  
6 the Internal Revenue laws to be subtracted from gross  
7 income, in computing the amount of net income for  
8 income tax purposes. Here, the Government contends,  
9 a fictitious salary payment was created to increase the  
10 deductions otherwise allowable to MBH and Bidio, so as  
11 to reduce the net taxable income to very small amounts  
12 upon which either no tax or very little tax would be  
13 due.

14 The evidence in the case need not establish  
15 beyond a reasonable doubt that the allowable deductions  
16 for salary expenditures were overstated in the exact  
17 amounts alleged; but only that the defendants willfully  
18 overstated, or caused to be overstated, in some  
19 substantial amount, the deductions to which the tax-  
20 paying corporation was entitled under the Internal  
21 Revenue laws, as charged in the indictment.

22 If you find beyond a reasonable doubt from the  
23 evidence in the case that fraudulent returns were  
24 filed on behalf of MBH and Bidio with the specific  
25 intent on the part of defendants to evade or defeat a



1  
2 substantial part of the tax lawfully due from those  
3 corporations, and that this was done willfully, then  
4 the offense became complete as soon as the fraudulent  
5 returns were willfully filed. A fraudulent tax  
6 return is one that is false, and known to be false, by  
7 the person or persons making it or causing it to be  
8 made; and is willfully filed with the intent to deceive.

9 It is not material that the Internal Revenue  
10 Service may have discovered the falsity of an income tax  
11 return, and may have been able by reason of that  
12 discovery to avoid a monetary loss. It is also  
13 immaterial whether or not the defendants were  
14 actually successful in obtaining any benefit as a  
15 result of the filing of a false or fraudulent tax  
16 return.

17 You must bear in mind, however, that if a person  
18 in good faith believes that an income tax return as  
19 prepared by him or by someone else for him, truthfully  
20 reports the taxable income and allowable deductions of  
21 the taxpayer under the Internal Revenue laws, he  
22 cannot be guilty of willfully preparing, or  
23 presenting, or causing to be prepared or presented a  
24 false or fraudulent return. Nor can he be guilty of  
25 criminal intent to evade the tax.

1  
2 On the other hand, if a person acts without  
3 reasonable ground for belief that his conduct is lawful,  
4 it is for you to decide whether he acted in good faith,  
5 or whether he willfully intended to evade the tax.  
6 This issue of intent, as I shall later explain, is  
7 one which you must determine from a consideration of  
8 all the evidence in the case bearing on the state of  
9 mind of each defendant on trial.

10 Now we turn to Counts 5, 6, 7, 10 and 12, each  
11 of which charges as a separate offense the willful and  
12 knowing preparation, signing and filing of an Employer's  
13 Quarterly Federal Tax Return (Form 941) on behalf of  
14 MBH and Bidio. The gist of the offenses charged in  
15 these counts is the willful making and subscribing by  
16 the defendant Pappadio of a tax return or other  
17 statement containing a written declaration that it is  
18 made under the penalty of perjury, and which the  
19 defendant did not believe to be true and correct as to  
20 every material matter. These charges are based on  
21 Section 7206(1), which I have already referred to as  
22 the other federal tax statute involved. For reasons  
23 which I shall later explain, the defendant DeLorenzo  
24 is also charged in these counts. The Government  
25 charges that at the time these Employer Quarterly returns  
were prepared, signed and filed, the defendant



1  
2 Pappadio did not believe them to be true and correct  
3 as to every material matter in that the defendant  
4 DeLorenzo was listed as a salaried employee of MBH and  
5 Bidio whereas Pappadio then and there well knew that  
6 he was not and had not performed any services on  
7 behalf of either of said corporations.

8 Three essential elements are required to be  
9 proved beyond a reasonable doubt in order to establish  
10 the offenses charged in counts 5, 6, 7, 10 and 12.

11 These are:

12 First, that the defendant Pappadio knowingly  
13 signed the employer's 941 return for the quarter in  
14 question verified by a written statement that it was  
15 made under penalty of perjury.

16 Second, that at the time the defendant signed  
17 the return it was not in fact true and correct as to  
18 every material matter.

19 Third, that at the time the defendant signed  
20 and filed the return, he acted willfully, that is,  
21 knowing and intending that a materially false return  
22 was being filed.

23 With respect to the first element, I instruct  
24 you that the employer's federal quarterly tax returns,  
25 Form 941, and their attached addenda and schedules, as



1  
2 made and subscribed by the defendant for the specified  
3 quarters in the years 1969, 1970 and 1971, if you find  
4 that such documents were made and subscribed by him,  
5 are returns contemplated by the statute.

6 With respect to the second essential element,  
7 that is, that the return was not in fact true and  
8 correct as to every material matter, the term "material"  
9 requires some explanation. The term "material" as  
10 used in the statute refers to information or matters  
11 of importance, not something which is inconsequential.

12 If you should find beyond a reasonable doubt that  
13 DeLorenzo was not in fact an employee of either of the  
14 corporations, then the inclusion of his name on the  
15 schedule of employees required to be submitted as  
16 part of the Form 941 return would be an important  
17 matter and therefore material within the meaning of  
18 the statute.

19 With respect to the third essential element,  
20 namely the state of mind with which the defendant  
21 Pappadio signed and filed the return, I have already  
22 explained to you what it means to act "willfully."  
23 In this case, that implies that he filed the return  
24 with knowledge that DeLorenzo was not actually an  
25 employee of the corporations and that the purpose of



1 including his name on the schedules was to deceive  
2 the Internal Revenue Service in respect of  
3 DeLorenzo's actual status.  
4

5 As I have said earlier, if you are not satisfied  
6 beyond a reasonable doubt from the evidence in this  
7 case that DeLorenzo was not performing services for  
8 either corporation, then it cannot be found that a  
9 materially false return was being filed willfully by  
10 the defendant Pappadio.

11 With respect to the counts we have thus far been  
12 considering, except for count 1, which charges  
13 conspiracy, you must have noted that the returns  
14 involved are all alleged to have been prepared, signed  
15 and filed by the defendant Pappadio. You may wonder  
16 on what basis the defendant DeLorenzo is charged in  
17 those same counts. As appears from the indictment,  
18 he is charged with the offense of aiding and abetting  
19 Pappadio's acts in regard to the returns involved.  
20 I will now explain what is meant by aiding and  
21 abetting.

22 Where two or more persons are charged with the  
23 commission of a substantive crime, the guilt of any  
24 defendant may be established without proof that he  
25 personally did every act constituting the offense



1 charged. This is so because under Section 2 of  
2 Title 18, United States Code, every person who  
3 willfully participates in the commission of a crime  
4 may be found to be guilty of that offense. The  
5 statute reads:  
6

7 "Whoever commits an offense against the United  
8 States, or aids, abets, counsels, commands, induces  
9 or procures its commission, is punishable as a  
10 principal.

11 "Whoever willfully causes an act to be done,  
12 which if directly performed by him or another would be  
13 an offense against the United States, is punishable  
14 as a principal."

15 Under this statute it is not even necessary  
16 that the aider or abettor be present at the actual  
17 commission of the offense.

18 I caution you, however, that mere presence and  
19 guilty knowledge on the part of a person would not  
20 suffice to make him an aider and abettor. You must be  
21 convinced beyond a reasonable doubt that he was  
22 knowingly doing something to assist in accomplishing  
23 the crime.

24 To determine whether the defendant DeLorenzo  
25 aided and abetted the commission of the offenses



1 charged, you should ask yourselves these questions:  
2 Did he associate himself with the scheme? Did he  
3 participate in it as something he wished to bring  
4 about? Did he seek by his action to make it succeed?  
5 If he did, then he is an aider and abettor and you may  
6 find him guilty as charged. If not, you must acquit  
7 him regardless of the decision you reach with respect  
8 to defendant Pappadio.  
9

10 Now we come to the last group of counts you will  
11 have to consider, namely, counts 17, 18 and 19. In  
12 those counts the Government charges that the defendant  
13 DeLorenzo, aided and abetted by the defendant Pappadio,  
14 did unlawfully, willfully and knowingly make, sign and  
15 file individual income tax returns (Form 1040), for the  
16 calendar years 1969, 1970, and 1971. These counts  
17 allege that the tax return for each year was verified  
18 by a written declaration that it was made under the  
19 penalties of perjury and that DeLorenzo did not  
20 believe the returns to be true and correct as to every  
21 material matter, in that they falsely listed his  
22 occupation as "salesman" and his employer as either  
23 MBH or Bidio, when he then knew he was neither employed  
24 by nor performed services for those corporations.

25 Before the defendant DeLorenzo may be convicted

1  
2 on those counts, the Government must establish  
3 beyond a reasonable doubt each of the three essential  
4 elements as follows:

5 First, that DeLorenzo knowingly signed his  
6 Form 1040 individual tax return for the year in  
7 question, verified by a written statement that it was  
8 made under penalty of perjury.

9 Second, that at the time DeLorenzo signed the  
10 return, it was not in fact true and correct as to  
11 every material matter.

12 Third, that at the time DeLorenzo signed and  
13 filed the return he acted willfully, that is, knowing  
14 and intending that a materially false return was  
15 being filed.

16 In the case of the defendant Pappadio, who is  
17 charged in those counts as an aider and abettor, the  
18 Government must satisfy you beyond a reasonable doubt  
19 that he acted as such according to the principles I  
20 have heretofore explained to you with respect to the  
21 offense of aiding and abetting.

22 You will note that it is not the Government's  
23 theory that defendant DeLorenzo sought to evade or  
24 defeat the payment of any personal income tax owed by  
25 him. The charge is limited entirely to the allegation



1  
2 that in the space provided he listed his occupation  
3 as "salesman" and his employer as either MBH or Bidio  
4 and also in two of the years, 1970 and 1971, did  
5 attach the form W-2 Wage and Tax Statement that  
6 indicated the source of the earnings declared.

7 In connection with your consideration of these  
8 counts, I charge you that the term "employee" includes  
9 every individual performing services of whatever  
10 nature, if the relationship between him and the person  
11 or other entity for whom he performs such services is  
12 the legal relation of employer and employee. The  
13 relationship of employer and employee exists when the  
14 person for whom the services are performed has the  
15 right to control and direct the individual who  
16 performs the service not only as to what shall be done,  
17 but how it shall be done. Moreover, the test whether  
18 a particular person is an employee is not determined  
19 by the reasonableness or unreasonableness of the  
20 amounts of wages paid or whether the services rendered  
21 are not as described by the employee's designation in  
22 his individual tax return.

23 I instruct you further that no matter what  
24 DeLorenzo did with the salary checks he received, if  
25 in fact they were received for services performed, then

1  
2 it was the obligation of the corporations to report  
3 such earnings and withhold taxes on them and also the  
4 obligation of DeLorenzo to report them in his  
5 personal income tax return, together with the W-2  
6 statement attached.

7 It must be apparent to you from the evidence you  
8 have heard and the final arguments of counsel that a  
9 critical question of fact in this case is whether or  
10 not DeLorenzo was an employee of MBH and Bidio in the  
11 sense that he either did or did not perform services  
12 as an employee for those corporations. The burden of  
13 proving the negative -- that DeLorenzo was not an  
14 employee -- rests entirely upon the Government.  
15 Unless you are satisfied beyond a reasonable doubt by  
16 the Government's evidence that DeLorenzo was not an  
17 employee in the sense of performing no services for  
18 which salary would be paid, then you must acquit both  
19 defendants.

20 You recently heard the arguments of counsel,  
21 reviewing the evidence for you and suggesting the  
22 inferences which you ought to draw therefrom. It will  
23 not be my purpose to comment further except in the  
24 context of pointing out how you should proceed.

25 First, let me note that there was testimony by



1  
2 an expert witness for the Government, Mr. Buchbinder,  
3 in which he made certain computations based upon tax  
4 returns of the defendant Pappadio for the purpose of  
5 showing that Pappadio could have evaded taxes on sums  
6 of money he might have received if, as the Government  
7 contends, the purpose of the scheme was to funnel  
8 the monies paid as salary back into Pappadio's hands.  
9 Bear in mind that Pappadio is not charged with personal  
10 tax evasion. The Government in its indictment charges  
11 that it was the corporations whose tax liability was  
12 evaded by the scheme alleged. The Government was  
13 permitted to introduce the evidence I have referred to  
14 for an extremely limited purpose, namely, what  
15 Pappadio's motive might have been for doing the acts  
16 which the Government charges him with doing in  
17 connection with the tax of the corporations. Unless  
18 you find beyond a reasonable doubt that Pappadio,  
19 aided and abetted by DeLorenzo, did those acts  
20 knowingly and willfully and with the purpose and intent  
21 of defeating the tax liability of MBH and Bidio, you  
22 may not convict him on the basis of Mr. Buchbinder's  
23 testimony based upon the hypothesis that Pappadio  
24 stood to gain substantially, if the scheme succeeded.

25 One further word with respect to the defense

1  
2 theory of the case. As I have repeated a number of  
3 times, the defendants were under no obligation to produce  
4 any evidence whatsoever. They were at liberty,  
5 however, as they have done, to point to flaws in the  
6 Government's case which support contentions they have  
7 advanced that neither defendants could have gained  
8 financially as a result of the acts the Government  
9 charges they committed. The defendants are entitled  
10 to have you consider their defense in connection with  
11 your deliberations.

12 A defendant may be proven guilty by either  
13 direct or circumstantial evidence. Direct evidence is  
14 the testimony of one who asserts actual knowledge of a  
15 fact, that which comes to him by virtue of his senses,  
16 such as an eyewitness. Circumstantial evidence is  
17 proof of a chain of facts and circumstances indicating  
18 the guilt or innocence of a defendant; where facts  
19 are established from which, in terms of common  
20 experience, one may logically infer other facts that  
21 are sought to be established.

22 The law makes no distinction between the weight  
23 to be given to either direct or circumstantial evidence.

24 Circumstantial evidence, if believed, is of no  
25 less value than direct evidence for in either case you



1  
2 must be convinced beyond a reasonable doubt of the  
3 guilt of the defendant.

4 In this case the Government relies upon both  
5 direct and circumstantial evidence.

6 Whether a defendant knowingly and intentionally  
7 participated in the claimed conspiracy or knowingly  
8 and willfully committed the acts charged in the  
9 substantive counts presents an issue of fact, clearly  
10 this concerns what is in one's mind.

11 Medical science has not yet devised an  
12 instrument whereby we can go back to the time of the  
13 occurrence of the events and determine what then was  
14 a person's intent or knowledge.

15 These may be determined from one's acts, his  
16 conduct, and surrounding circumstances, and such  
17 inferences which may reasonably be drawn therefrom.

18 If you find circumstances of secrecy, intrigue  
19 or attempts to conceal the true nature of a  
20 transaction, these may be considered by you as  
21 circumstantial evidence of criminal intent.

22 Proof of motive is not a necessary element of  
23 the crime with which the defendants are charged.

24 Proof of motive does not establish guilt, nor  
25 does want of proof of motive establish that a

1  
2 defendant is innocent.

3 If the guilt of a defendant is shown beyond a  
4 reasonable doubt, it is immaterial what the motive for  
5 the crime may be or whether any motive be shown, but  
6 the presence or absence of motive is a circumstance  
7 which you may consider as bearing on the intent of a  
8 defendant.

9 So, too, it is not necessary for the Government  
10 to show that a defendant had a financial interest in  
11 the conspiracy.

12 His interest may be that of seeking by his  
13 action to make the conspiracy succeed.

14 The stake is in the success of the enterprise.

15 I have not adverted to all the evidence upon  
16 which the Government and the defendants rely to  
17 support their respective contentions.

18 All evidence, whether or not I have referred to  
19 it, or counsel have mentioned it in their summations,  
20 is important and must be considered by you.

21 In my outline of the testimony, I have sought  
22 to state the substance thereof with complete accuracy.

23 However, if perchance any reference to testimony  
24 does not agree with your recollection -- and I have  
25 stated this before -- you are to disregard such



1  
2 references by me, and I emphasize this as strongly as  
3 words can convey meaning.

4 Always, it is your recollection, and yours alone,  
5 that governs, and you must unhesitatingly reject any  
6 statement as to a fact which I have made which does  
7 not accord with your own recollection.

8 As I have said, it must be apparent to you that  
9 the versions of the Government and defense are in sharp  
10 divergence on key points and that critical issues of  
11 fact and credibility are raised.

12 You are called upon to decide the fact issues  
13 here.

14 How do you decide this?

15 Now, I think you understand why at the start of  
16 the trial I suggested that it would be desirable and  
17 important for you not only to listen, but to look at  
18 the witnesses as they testify.

19 Your determination of the issue of credibility  
20 very largely must depend upon the impression that a  
21 witness made upon you as to whether or not he was  
22 telling the truth or giving you an accurate version  
23 of what occurred.

24 I often say to jurors, when you walk in the  
25 door of that courtroom and sit in the jury box, while

1  
2 the trial is going on, when you are deliberating in  
3 the jury room you have your common sense, your good  
4 judgment and your experience with you.

5 You decide whether or not a witness was  
6 straightforward and truthful; whether he attempted to  
7 conceal anything; whether he has motive to testify  
8 falsely; whether there is any reason why he might color  
9 his testimony.

10 In other words, what you try to do, to use the  
11 vernacular, is to size a person up just as you would  
12 do, as I have said before, in any important matter  
13 where you were undertaking to determine whether or not  
14 a person is truthful, candid and straightforward.

15 In passing upon the credibility of a witness,  
16 you may also take into account inconsistencies or  
17 contradictions as to material matters in his own  
18 testimony, or any conflict with that of another  
19 witness.

20 A witness, however, may be inaccurate, contra-  
21 dictory, or even untruthful in some respects, and yet  
22 be entirely credible in the essentials of his testimony.

23 The ultimate question for you to decide in  
24 passing upon credibility is did the witness tell the  
25 truth here before you as to essential matters?



1  
2 The fact that some witnesses were Government  
3 employees does not entitle their testimony to any  
4 greater weight or consideration than that afforded to  
5 any other witness in the case.

6 You will evaluate their credibility the same  
7 way you do that of any other witness.

8 If you find that any witness -- and this  
9 applies alike to government and defense -- willfully  
10 testified falsely as to any material fact, you have a  
11 right to reject the testimony of that witness in its  
12 entirety, or you may accept that part or portion which  
13 commends itself to your belief as credible.

14 In the course of the trial, one of the  
15 Government witnesses was qualified as an expert, and  
16 I refer to Mr. Buchbinder. Ordinarily, a witness is  
17 not permitted to testify as to opinions or conclusions  
18 as Mr. Buchbinder did. An exception to this rule  
19 exists as to those whom we call expert witnesses --  
20 witnesses who by knowledge, skills, experience,  
21 training or education have become expert in some  
22 profession or calling may state an opinion as to  
23 relevant, material matters which they profess to be  
24 expert and they also state their reason for the  
25 opinion.



1  
2           You may consider any expert opinion received  
3 in evidence in this case and give it such weight as  
4 you may think it deserves. If you should decide that  
5 the opinion or evidence of Mr. Buchbinder is not based  
6 upon such knowledge, skill, experience, training or  
7 education, or if you should conclude that the reasons  
8 given in support of his views are not sound or that  
9 the opinion is outweighed by other evidence, you may  
10 disregard the opinion entirely. If, on the other hand,  
11 you decide the opinion of Mr. Buchbinder or his views  
12 are based upon sufficient knowledge, skill, experience,  
13 training or education, and that the reasons given by  
14 him are sound, then you may credit his testimony  
15 concerning his calculations with respect to the  
16 matters he testified about.

17           Neither of the defendants has testified in this  
18 case. That is their absolute right and in no respect  
19 may be considered by you as any evidence against  
20 either of them or as a basis for any presumption or  
21 inference unfavorable to them.

22           You must not permit that fact to weigh in the  
23 slightest degree against them, nor should it enter  
24 into your deliberations or discussion.

25           The evidence in this case consists of the



testimony of all witnesses, except that which I have instructed you to disregard, all exhibits received in evidence, the taped conversations you heard, and all facts or portions of testimony which counsel stipulated may be read to you.

All evidence, whether or not I have referred to it, or counsel have mentioned it in their summations, is important and must be considered by you.

Bear in mind that guilt is personal. The guilt or innocence of each defendant on trial must be determined solely upon the evidence presented against him or the lack of evidence.

The charges against each of them stand or fall upon the proof, or lack of proof against the particular defendant, and not against the co-defendant.

During the course of the trial, the attorneys at various times have objected to certain questions, have moved to strike answers, and taken other procedural positions before you.

These are matters of technical procedure that are the proper concern of the attorneys and should not concern you.

I instruct you that you are not to draw any inferences from the fact that attorneys have made



1 objections and motions before you during the trial.

2 The Government, to prevail, must prove the  
3 essential elements by the required degree of proof,  
4 as already explained in these instructions.  
5

6 If it succeeds, your verdict should be guilty;  
7 if it fails, it should be not guilty.

8 The case of each defendant must be considered  
9 separately as if he alone were on trial.

10 Thus, there are various possible verdicts.

11 You may find each defendant not guilty; you  
12 may find each guilty.

13 However, to find one defendant guilty of  
14 conspiracy you must find that he was engaged in the  
15 conspiracy with the other defendant on trial, since,  
16 as I have told you, a conspiracy requires an agreement  
17 or understanding between at least two persons.

18 Your verdict must be unanimous.

19 Your function is to weigh the evidence in the  
20 case, and to determine the guilt or innocence of the  
21 defendants solely upon the basis of such evidence and  
22 these instructions.

23 Under your oath as jurors, as I mentioned  
24 previously, you cannot allow a consideration of the  
25 sentence which may be imposed upon a defendant, if he



1  
2 is convicted, to enter into your deliberations, or to  
3 influence your verdict in any way.

4 Your duty is to decide the case solely and only  
5 upon the evidence.

6 In the event of a conviction, the duty of  
7 imposing sentence rests solely with the Court.

8 During deliberations each juror is entitled to  
9 his or her own opinion, but each should, however,  
10 exchange views with his fellow jurors.

11 That is the very purpose of jury deliberation  
12 -- to discuss and to consider the evidence; to listen  
13 to the arguments of fellow jurors; to present your  
14 individual views; to consult with one another; and to  
15 reach an agreement based solely and wholly on the  
16 evidence, if you can do so without violence to your  
17 own individual judgment.

18 Each one must decide the case for himself or  
19 herself after consideration with his or her fellow  
20 jurors.

21 But you should not hesitate to change an opinion  
22 which, after discussion with your fellow jurors,  
23 appears erroneous.

24 However, if after carefully considering all the  
25 evidence, and the arguments of your fellow jurors, you

1  
2 entertain a conscientious view that differs from others,  
3 you are not to yield your judgment simply because you  
4 are outnumbered or outweighed.

5 Your final vote must reflect your conscientious  
6 view as to how the issues should be decided.

7 The charge here is a most serious one.

8 The just determination of this case is important  
9 to the public; it is equally important to these  
10 defendants.

11 Under your oath as jurors, you must decide this  
12 case without fear or favor and solely, as I have  
13 stated any number of times, in accordance with the  
14 evidence and the law.

15 If the Government has failed to carry its  
16 burden as to any counts against the defendant, your  
17 sworn duty is to acquit; if it has carried its  
18 burden as to a defendant on any count, you must not  
19 flinch from your sworn duty -- you must convict.

20 Now, members of the jury, because of the  
21 number of counts I have endeavored to supply you with  
22 what we call a special form of verdict that hopefully  
23 will help guide your deliberations in the jury room  
24 in terms of instructions I have given you. I have  
25 prepared an original which will be retained by



1  
2 Juror No. 1 who by custom is your Foreman and there  
3 will be copies for each of you individuall to have  
4 before you during your deliberations.

5 Now, unfortunately -- or maybe I should say  
6 fortunately -- twelve of you have remained in good  
7 health and have been present at all times. Therefore,  
8 it becomes my somewhat unhappy duty to disassociate  
9 the two alternate jurors at this point since only  
10 twelve jurors may deliberate.

11 And, therefore, gentlemen, if you have any  
12 belongings in the back room, you may retreat there now  
13 and recover them and check in downstairs on your way  
14 out. And you leave with my sincere thanks for your  
15 daily patience, persevering attention and presence.  
16 So thank you very much. You have served a very useful  
17 purpose, I assure you, because often we have had a  
18 juror drop out. And, of course, unless there are  
19 twelve there can be no verdict.

20 All right, gentlemen, you may recover your  
21 things while I chat a bit for a minute or two with  
22 the rest of the jurors.

23 (Whereupon, the two alternate jurors retired  
24 from the courtroom.)

25 (continued next page)

1  
2 Now, members of the jury, you are entitled to  
3 have all the exhibits in the jury room. You may, if  
4 you wish, have a copy of the indictment. You are  
5 entitled to have testimony read back to you should  
6 that become necessary. It has been transcribed so it  
7 would be a somewhat less difficult matter than if it  
8 had not been transcribed.

9 However, it is my recommendation that since  
10 you have been sitting here and listened to the  
11 arguments of counsel, exchange views with one another  
12 and ask for testimony to be read back only in portions  
13 necessary to resolve failure of recollection or some  
14 disagreement over what a particular witness may have  
15 said or didn't say as the case may be, rather than a  
16 wholesale reading which takes a great deal of time  
17 away from your deliberations.

18 As I said, juror No. 1 will be your Foreman by  
19 custom.

20 If you have any communications for the Court,  
21 you simply write a note or have your Foreman write  
22 the note -- there are pads and pencils in the jury  
23 room. Knock on the door and the marshal will bring it  
24 into court and I will reconvene counsel and we will  
25 consider what response should be made to whatever your



1  
2 inquiry or question may be. The same goes for any  
3 request for exhibits, testimony or what have you.

4 Now, I am going to ask you to retire for a  
5 few minutes and not to begin your deliberations until  
6 I give you the signal so that I may ask counsel  
7 whether I have misspoke anything or omitted anything  
8 they would prefer to have me say. When that is done,  
9 I will give you the signal either to come back in or  
10 start deliberations.

11 All right, you may retire now because I assume  
12 your colleagues have left.

13 (Jury excused.)

14 MR. ROSSMAN: I have no exceptions.

15 THE COURT: Do you want copies of this?

16 MR. MARKOWITZ: What is that?

17 THE COURT: The form of verdict I mentioned,  
18 the proposed form.

19 (Documents handed to counsel.)

20 MR. MARKOWITZ: I was going to ask your Honor  
21 to charge that if they find him not guilty of  
22 conspiracy he must be acquitted on all of the counts.

23 It would follow, if they didn't conspire with  
24 each other to do the acts, they couldn't aid and  
25 abet each other and do the substantive acts.

1 I assure you. You will just hear from Mr. Scotti,  
2 representing the Government on the opening and you  
3 will return here tomorrow morning at 10 o'clock, when  
4 the rest, you will hear the rest of the closing  
5 arguments or summations. Then Mr. Scotti, you will  
6 hear from again as having the last word. After that,  
7 I will give you the instructions on the law and you  
8 will then retire to begin your deliberations. All  
9 right, Mr. Scotti, you may proceed.

10 MR. SCOTTI: Ladies and gentlemen, as Judge  
11 Neaher indicated to you, the time is soon coming when  
12 you will have to decide the issues in this case. And  
13 under our system of law, what that basically means is  
14 you will be called upon, as many jurors are throughout  
15 this land every day of the week, to decide guilt or  
16 innocence of Michael Pappadio and Matteo DeLorenzo.

17 Now, during the course of my summation, I will  
18 try to discuss the evidence in such a way as to aid  
19 your determination. And as I do, and I am sure defense  
20 counsel would join with me, I would request you to  
21 analyze the evidence on the basis of your good, God-  
22 given common sense. This has been a relatively short  
23 trial. I think the issues have been clear. And as I  
24 said to you in my opening, I think the basic issue,  
25 I submit to you the basic issue which you will have to



1  
2 decide during the course of your deliberations, is  
3 very simply, did Matteo DeLorenzo work for MBH or  
4 Bidio? Because I submit to you at the outset,  
5 ladies and gentlemen, that if he did no work for  
6 MBH or Bidio, then those corporations had no right to  
7 take salary deductions for work allegedly performed  
8 by him. They had no right to include his name on  
9 the quarterly withholding and social security tax  
10 returns, the 941's which you have heard about, and  
11 Matteo DeLorenzo would have no right on his personal  
12 tax returns to claim the source of income as either  
13 MBH Sales Corporation or Bidio Management Corporation.

14 And I suggest to you at the outset, ladies and  
15 gentlemen, that the evidence that you have heard during  
16 the course of this trial has overwhelmingly established  
17 that in fact Matteo DeLorenzo did no work for MBH Sales  
18 or Bidio Management.

19 Now, let's look at that evidence. Well, we know  
20 that in 1966, Matteo DeLorenzo was placed on the  
21 payroll of MBH Sales by Michael Pappadio.

22 He filed a W-4 form in evidence in 1966, took  
23 two exemptions, stated his name, his address, social  
24 security number. From that period of time on until  
25 approximately 1972, Matteo DeLorenzo's name appeared on

1  
2 the books and records of MBH and, as you have heard  
3 the testimony, of a successor corporation, Bidio  
4 Management.

5 The evidence is also shown that no one, no one  
6 in the industry, in the garment industry who dealt with  
7 MBH or Bidio ever heard of Matteo DeLorenzo. Ask  
8 yourselves why.

9 Let's look at Helen Miller's testimony, the  
10 bookkeeper. You remember Helen Miller. I think she  
11 was the first Government witness. She says Mr.  
12 Pappadio had to put Mr. DeLorenzo on the payroll. And  
13 as part of her duties, she prepared the quarterly 941  
14 returns. She made out paychecks for Mr. Pappadio to  
15 sign. She prepared the W-2 forms of the corporation  
16 based on the payroll records, all in the name of  
17 Matteo DeLorenzo.

18 You remember what Mrs. Miller told us about  
19 certain paychecks of Matteo DeLorenzo. She identified  
20 the checks. They are here. They are in evidence. You  
21 can look at them. They are Government's 14, 15 and 16,  
22 in evidence.

23 Government's 16 deals with MBH for the year 1969.  
24 14 and 15 deal with Bidio Corporation for '70 and '71.  
25 You remember what Mrs. Miller said. She said once in



## Summation-Scotti

1  
2 a while she would get those checks back, DeLorenzo's  
3 paychecks. From whom? DeLorenzo? No, Michael  
4 Pappadio.

5 In those paychecks that she got back, we have  
6 a name, Matteo DeLorenzo, endorsed on the back. Did  
7 she ever see Matteo DeLorenzo endorse the paychecks?  
8 No. And what would Mr. Pappadio ask her to do? She  
9 told us he would ask her, instruct her to go to a  
10 bank, cash the check. What did Mrs. Miller do after  
11 she did that? She came back. Who did she give the  
12 cash to? Matteo DeLorenzo? No, Michael Pappadio.  
13 She always gave the cash to Michael Pappadio.

14 And this isn't a situation where she didn't  
15 see Mr. DeLorenzo because she testified she would see  
16 DeLorenzo at MBH and at Bidio. And I asked her, who  
17 did she talk to? She talked to Mr. Pappadio. And I  
18 asked her, did Mr. DeLorenzo ever ask you for his  
19 paycheck? No. Did Mr. DeLorenzo ever ask you for the  
20 cash in his paycheck? No.

21 Now, ladies and gentlemen, Mrs. Miller testified  
22 that each time she cashed his check, she had to sign  
23 her name on the back, Helen Miller. You can look at  
24 the checks. There are approximately 27 checks in 1969,  
25 which Helen Miller cashed, which are written in the name

## Summation-Scotti

1  
2 of Matteo DeLorenzo, and there are approximately 7  
3 checks in 1970. And not once out of those 36 times,  
4 not once did she ever give the cash to Matteo DeLorenzo,  
5 always to Michael Pappadio.

6 Now, ladies and gentlemen, some of you may have  
7 had occasion to ask a friend or associate or co-worker  
8 to cash a payroll check for you. Ask yourselves how  
9 many of you have done it 36 times and never once asked  
10 the person who was cashing the check for the money  
11 which you needed to live on.

12 What else do we know about these checks? Re-  
13 member the stipulations of the defendants, entered into.  
14 You sat in the jury room for awhile and you came out.  
15 I told you that the defendants and their counsel and  
16 the Government had stipulated as to these checks,  
17 specifically as to the endorsements on these checks.  
18 In 1969, not one weekly payroll check that was issued  
19 in Matto DeLorenzo's name was endorsed by him.

20 Oh, there is a name here, Matteo DeLorenzo.  
21 There is a name, Matteo DeLorenzo, but Matteo DeLorenzo  
22 didn't endorse it. Someone else did. In 1970, on  
23 Bidio, not one, not one check was endorsed by Matteo  
24 DeLorenzo. Oh, again, there are names there. Matteo  
25 DeLorenzo, but he didn't sign the endorsements. He



## Summation-Scott1

1  
2 did not sign the endorsements. Someone else did.

3 And in 1971, approximately 21 checks out of  
4 about 50, only 21 were actually endorsed by the de-  
5 fendant Matteo DeLorenzo. For this 3-year period out  
6 of approximately 152 weekly payroll checks for 2 years  
7 in a row, Matteo DeLorenzo didn't endorse any of them.

8 Ask yourselves why. Ask yourselves, does this  
9 sound like a man who is legitimately on the payroll,  
10 who is legitimately using those checks as his source  
11 of funds to support himself in 1969 and 1970?

12 I submit to you, ladies and gentlemen, that the  
13 evidence clearly shows Matteo DeLorenzo did not sign  
14 these pay checks because he never considered them his  
15 pay checks, that this money was really Michael  
16 Pappadio's. I will get into that later on in my  
17 summation.

18 The evidence has clearly shown that Matteo  
19 DeLorenzo was a name on the payroll. There is no  
20 question about that. He was a name on the 941's.  
21 There is no question about it. He was a name on a W-2  
22 form.

23 Did Mrs. Miller know anything else about Matteo  
24 DeLorenzo? All she knew was she always gave his checks  
25 to Mr. Pappadio. She never saw him endorse any. She



## Summation-Scotti

1  
2 always gave cash when she cashed them to Michael  
3 Pappadio. She knew he didn't work in the cutting  
4 room. But other than that, she didn't know what he  
5 did.

6 Oh, before I forget, ladies and gentlemen, it  
7 was also stipulated Matteo DeLorenzo did sign three  
8 checks, one in 1969, one in '70 and one '71, all dated  
9 in April, large checks -- I will talk about them later  
10 -- all dated right around income tax time.

11  
12 (Continued next page.)  
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25



## Summation-Scott1

1  
2           What do we know about Matteo DeLorenzo? You  
3 remember when Irwin Bishins, he was the partner of  
4 Michael Pappadio, in business together. Did Mr.  
5 Bishins know who Mr. DeLorenzo was; no. Did he know  
6 DeLorenzo was on the payroll; no. Did he know that  
7 Mr. DeLorenzo ever did any work for MBH or for Bidio;  
8 no. Mr. Bishins told us that when he went into business  
9 with Michael Pappadio, he was going to handle the  
10 cutting, the pricing of the cutting work, and that  
11 Michael Pappadio was going to handle the sales.  
12 Remember him telling you that?

13           Michael Pappadio had been in the industry for  
14 many years. In fact, Mr. Bishins told us that he met  
15 Mr. Pappadio in Pennsylvania when he was the head of  
16 a contractors' association, and when that association  
17 dissolved, he and Mr. Pappadio went into business  
18 together.

19           Someone else, by the way, told us that he had  
20 gone into business with Mr. Pappadio also, and that  
21 Mr. Pappadio functioned with the business, and his  
22 function was of sales. You remember Mr. Bishins, do  
23 you remember that he was the man that owned Patricia  
24 Management out on Long Island. Mike Pappadio's  
25 function was the one who was supposed to get the



## Summation-Scotti

business. He was going to handle the selling and he would bring the business in, and the same thing with Bishins' shop; Michael Pappadio was going to bring in the business.

You will remember that Mr. Bishins told you that a large number of companies, manufacturers, which did business with MBH and Bidio were companies that were already owned by himself and Michael Pappadio. So I asked Mr. Bishins, well, if you already owned the company, would you need a salesman to go out and solicit work from those companies to do business with yourself. He said, "No, I certainly wouldn't have to hire anybody to do business with myself."

Ladies and gentlemen, the Government has prepared a summary chart which the judge will tell you is not in evidence, the other items are, but these are merely summaries of those books and records of the corporation, and those books and records are in evidence and you can use these as summaries to help you to understand the entries and information which is contained in those books and records.

When you look at these charts, you will see that a large amount of business, not all, less than half, but a good percentage of that business that MBH and



## Summation-Scotti

1  
2 Bidio did, was cutting work of materials for companies  
3 that were owned by Michael Pappadio and Irwin Bishins.  
4 There was no need for them to solicit those companies.

5 Mr. Bishins testified that he had no idea in  
6 1968 that DeLorenzo was paid \$35,000 by MBH, and that  
7 in 1969, DeLorenzo was paid \$27,500 by MBH. In 1970,  
8 he was not aware that DeLorenzo was paid \$20,600 by  
9 Bidio and that in 1971, DeLorenzo was paid \$22,450  
10 by MBH. That's a lot of money, and yet he had abso-  
11 lutely no idea who DeLorenzo was, what he did, and in  
12 fact, that he was paid that money, absolutely none.

13 Now you heard the testimony of Mr. Bishins. He  
14 was candid to state that he really did run the every-  
15 day operations of MBH and Bidio, Mr. Pappadio did.  
16 You will recall that on cross-examination by defense  
17 counsel, defense counsel kept harping on who was in  
18 control, Michael Pappadio. Who had the right to hire  
19 and fire, Michael Pappadio. Michael Pappadio told  
20 people what to do, when to do it and how to do it, and  
21 I submit to you, ladies and gentlemen, with all that  
22 power, control and might, that Michael Pappadio manipu-  
23 lated the books and records of MBH and Bidio, to  
24 reflect that Matteo DeLorenzo was an employee, when,  
25 in fact, he was not.



## Summation-Scott1

1  
2 Remember when Mr. Bishins said to you, he  
3 told you that the first time he learned that Matteo  
4 DeLorenzo was on the books of MBH and Bidio was when  
5 he was testifying in a grand jury, in Brooklyn, in  
6 this courthouse, in 1973. He testified twice, once  
7 on March 6th and the evidence shows also on March 13th.  
8 He was asked about DeLorenzo in the grand jury. And  
9 after those two appearances, Mr. Bishins told you that  
10 he had a conversation with Mr. Pappadio and he said,  
11 "Hey, what's going on. They're asking me about  
12 DeLorenzo. They say he's on the payroll." And what  
13 did Mr. Pappadio say. Remember, Mr. Bishins said he  
14 told him don't worry about it, you stick to the pro-  
15 duction and let me worry about MBH and Bidio.

16 Ask yourselves what kind of an answer is that.  
17 This is your partner, and he has been called down  
18 before a Federal grand jury and you are being asked  
19 about someone who is supposedly on the payroll that  
20 you know nothing about. Does he say to him, "Don't  
21 worry, he was a salesman and he's helping out," no.  
22 Does he say to him, "Don't worry about it, he does a  
23 lot of jobs for us in the corporation," no. Does he  
24 try to alleviate, be concerned that Mr. Bishins had  
25 felt, as we all might feel when you are called before a



## Summation-Scott1

1  
2 grand jury and somebody says where is your payroll  
3 record and what do you know about this man, then you  
4 turn to your partner and ask who is this guy and what  
5 do you know about him, but that wasn't what Mr.  
6 Pappadio said. Mr. Pappadio told him to stick to  
7 production and let him worry about MBH and Bidio.

8 In other words, mind your own business, what  
9 I do is my business. Why? I submit to you, ladies  
10 and gentlemen, because Mr. Pappadio didn't want to  
11 get into any discussions about Matteo DeLorenzo with  
12 Bishins because then Bishins would have started asking  
13 questions and one thing Pappadio wanted was for Bishins  
14 to find out nothing about the fact that he was carrying  
15 Matteo DeLorenzo on that payroll, and paying him those  
16 large amounts of money when he wouldn't be able to  
17 justify anything that Mr. DeLorenzo was doing.

18 Let's also look at some of the other people  
19 at MBH and Bidio. Let's look at Nat Sacco, he is the  
20 brother-in-law of Pappadio, the defendant. He told us  
21 that during the years in question he was the head  
22 cutter and foreman of the cutting room. He told us  
23 yes, that he knew Matteo DeLorenzo, sure, he was  
24 introduced to him by Mr. Pappadio. Mr. Pappadio  
25 introduced him as a salesman, but even Mr. Sacco, the



## Summation-Scotti

1  
2 defendant's brother-in-law, had to admit he never  
3 received any instructions from Mr. DeLorenzo, never  
4 got any orders from Mr. DeLorenzo. In fact, he really  
5 didn't know what Mr. DeLorenzo did at all. The only  
6 thing he knew was that Michael Pappadio had intro-  
7 duced him to DeLorenzo and called DeLorenzo a salesman.

8 So at this point, the bookkeeper doesn't know what  
9 he does, the foreman knows him but doesn't know what  
10 he does, the 50 per cent partner didn't even know he  
11 existed. Apparently the only person who knew that  
12 Matteo DeLorenzo or what he was doing or supposed to  
13 be doing or not doing for the corporation was the de-  
14 fendant, Michael Pappadio. Even when Michael Pappadio  
15 had an opportunity to explain to Bishins after his  
16 appearance at the grand jury what the story was with  
17 Matteo DeLorenzo, all he said was, "You stick to what  
18 you're doing and let me worry about MBH."

19 If you ask yourselves, ladies and gentlemen,  
20 at this point, with the type of company or business  
21 that MBH or Bidio was doing, does it make sense where  
22 you have a small company of 30 to 40 employees, where  
23 mostly cutters working in the shop as the witnesses  
24 testified to that, and here you have Sacco in charge  
25 of the cutters, Miller doing the bookkeeping and Michael



## Summation-Scotti

Pappadio was there in charge, and Bishins would come in and do pricing for them, does it make sense in a business of that type that none of them knew what Matteo DeLorenzo did. Ask yourselves why, and I submit to you the answer is because Matteo DeLorenzo did nothing; he was just a name on a payroll, and he did absolutely no work for either MBH or for Bidio.

(Continued next page.)

1  
2 Now, let's move from those two companies and  
3 let's go to a company that did business with MBH.  
4 I'm sure you recall the testimony of these men, who  
5 came in and testified for you. Some of the testimony  
6 was stipulated to save time. None of these individuals  
7 ever dealt with or heard of Matteo DeLorenzo. Ask  
8 yourselves, does that make sense, is that consistent  
9 or is it logical. Here is a man that was supposed to  
10 be an employee, he calls himself a salesman on his  
11 tax returns and he says, yes, I'm a salesman. Where  
12 do you work; MBH. Where do you work: Bidio. He was  
13 supposed to be employed from 1966 through 1973, for  
14 either MBH or for Bidio, and he was supposed to be  
15 out on the road and the defense wants you to believe  
16 that he was out there pounding the pavement for MBH  
17 and Bidio, and yet nobody ever heard of that. Nobody  
18 ever heard of him.

19 Some of the witnesses said, well, you know,  
20 they really weren't involved in that, it wasn't their  
21 job. They were involved more with production to take  
22 care of, but I ask you, ladies and gentlemen, don't  
23 you think that if Matteo DeLorenzo was out there on  
24 that street, 5 days a week, 50 weeks a year or how  
25 many, from 1969 through '72, that somebody would have



1  
2 heard of him. You didn't necessarily have to deal  
3 with him, but somebody could say, yes, I knew him,  
4 he worked for Pappadio, MBH, but I didn't deal with  
5 him. I knew he was around. Yet, nobody ever heard  
6 of this man and why; because he wasn't a salesman,  
7 he wasn't cutting orders and he wasn't doing anything.  
8 He did not work for these corporations.

9 Of course, the evidence I would suggest to  
10 you is susceptible to another interpretation, and  
11 that as you will recall, there were a lot of these  
12 men who represented the customers that did business  
13 with MBH and Bidio, who testified that they had known  
14 Michael Pappadio for a long time, a long time; some  
15 12 years, some 15 years and some 20 years. They had  
16 met him in the industry, they met him socially, and  
17 they knew who he was and they dealt with him, with  
18 Michael Pappadio, either that or some of their fathers  
19 had been very friendly with Michael Pappadio and that  
20 is how the relationship began and that is how MBH  
21 got to those customers, those various customers. Once  
22 those relationships started, it just continued and MBH  
23 was that cutter.

24 Yes, I know MBH; that's Mike Pappadio. When  
25 MBH became Bidio, still it was Mike Pappadio; never

Summation-Scotti

1216

1  
2 Matteo DeLorenzo. Of course, that explanation I  
3 submit to you for interpretation would conform with  
4 what Mr. Bishins said to you. Mr. Bishins said that  
5 as far as he knew the only salesman was Mike  
6 Pappadio.

7 Remember the foreman of the shop who had known  
8 Michael Pappadio for about 17 or 18 years, who was  
9 his partner. He was friendly with Pappadio, that is  
10 how the relationship started way back in 1960 or '61,  
11 long before Mr. DeLorenzo was put on the books. Arnold  
12 Passeroff was another one. His father he told us made  
13 the original arrangement with MBH for the cutting work  
14 many years before. Mr. Passeroff said, he very rarely,  
15 once the relationship started, talked to Mr. Pappadio.  
16 The fellow he talked to was Nat Sacco, about once a  
17 week.

18 Stanley Yellin or Campbell Walker, and even  
19 Rusty Stevens, he said he had known Mr. Pappadio for  
20 about 15 years. He talked with Pappadio about once a  
21 week, and he even told you that he was using a trucking  
22 company owned by the Pappadio's. He told you that Mr.  
23 Pappadio referred him and his company to other cutters  
24 and never heard of DeLorenzo. We also heard from  
25 Richard Daro, and he and Mr. Pappadio were 50 per cent



1  
2 owners of Daro Sales. You were also told that they  
3 were very good friends, and they were such good  
4 friends that when he had problems with his business,  
5 financial difficulties to make up, Mr. Pappadio  
6 lent him \$44,000 without interest, to help in the  
7 business.

8           According to the W-2 returns which you can  
9 look at, they are in evidence, according to the forms  
10 submitted by Mr. Pappadio along with his 1969 personal  
11 income tax returns, Mr. Pappadio was an employee of  
12 Ken Walker and he received a salary and wages of  
13 \$6,300 in that year. Remember Mr. Buchbinder who  
14 did not testify for you, but that his testimony was  
15 stipulated to. If he had testified, he would have  
16 told you that he had never heard of or dealt with  
17 Matteo DeLorenzo, and we can tell from the W-2 forms  
18 which are attached to Mr. Pappadio's personal income  
19 tax return, that Mr. Pappadio must have been, or rather  
20 had some relationship with him. There must have been  
21 some relationship because according to the W-2 forms  
22 for 1969, Mr. Buchbaum's firm paid Michael Pappadio  
23 \$14,300 in salary and wages. In 1970, they paid  
24 \$10,775 in wages and then again in 1971 that same  
25 company paid him some \$9,000 in salary and wages.



1  
2 What does that all mean. That means simply  
3 this, ladies and gentlemen, that there was absolutely  
4 no need for Michael Pappadio to go out and hire anyone  
5 to help him with sales, or needed any sales help.  
6 He knew these people, they were all in the industry  
7 and they all knew each other. They were all friendly.  
8 Now, does it make sense that Michael Pappadio was  
9 going to hire Matteo DeLorenzo and pay him \$35,000,  
10 \$27,000, \$25,000, \$20,000; that's a lot of money.  
11 Does it make sense that he paid him all this money  
12 to do something that he could simply do by picking up  
13 the phone, dialing a number and calling one of his  
14 friends in the industry and saying, "I am a little  
15 slow. Do you have any cutting work for me?" And  
16 something would be sent over. He didn't need any  
17 salesmen, Michael Pappadio took care of it.

18 Now, ladies and gentlemen, what has the evidence  
19 established thus far. I submit to you, it has established.  
20 Number One, that there is no reason for a salesman.  
21 Number Two, it established that Matteo DeLorenzo did  
22 no work for these two corporations. Yet the evidence  
23 goes on. Remember the testimony of Fred Warner and  
24 Mario Suriano. Warner was called to the stand and I  
25 showed him two checks that were written out in the name



1  
2 of Matteo DeLorenzo in 1969, that is the year in  
3 which Mr. DeLorenzo didn't endorse any of his own  
4 paychecks.

5 Mr. Warner looked at those checks and said,  
6 "Gee, my endorsement is on these checks." I said let  
7 me ask you something; did you know Matteo DeLorenzo  
8 in 1969, and he said, no. Did you know Michael  
9 Pappadio in 1969, he's the one that made out the  
10 checks and he says, "Oh, yes, I knew Michael Pappadio  
11 because I was working in the House of She and Michael  
12 Pappadio owned it." Ask yourself, how did Fred  
13 Warner get those checks. The answer is very simple,  
14 from Michael Pappadio. And for what we don't know,  
15 the evidence doesn't tell us. But it does tell us  
16 with regard to Mario Suriano, however. How Michael  
17 Pappadio thought about the supposed payroll checks  
18 were to Matteo DeLorenzo.

19 Remember that Mr. Suriano told us that he was  
20 going to build a house. He went to his uncle for the  
21 loan; his uncle said sure, I'll lend you the money.  
22 How did Mr. Pappadio pay Mr. Suriano, how did he give  
23 him that loan. He gave him a personal check; no. Did  
24 he give him a bank check; no. Did he give him a  
25 corporate check made out to Mario Suriano; no. When



1 Mario Suriano testified that Mr. Pappadio, his uncle  
2 by marriage, gave him about \$25,000 in cash and in  
3 checks, what kind of checks were they; they were all  
4 corporate checks that were issued by Michael  
5 Pappadio and the names of other people. We read one  
6 of the names which was Joseph Finelli, and he read  
7 that and remembered that he was a friend of the  
8 family, a friend of the family that he married into,  
9 a friend of the Pappadio family. He also remembered  
10 some of the names of the corporations on the checks;  
11 Patricia Management, which we know now is owned by  
12 Mr. Pappadio. Mar-Jo, which is owned by Mr. Pappadio.  
13 Several of these checks, several of them covering a  
14 period of time from approximately May through  
15 September of 1969, were payroll checks in the name of  
16 Matteo DeLorenzo; six of them are endorsed in the name  
17 of Matteo DeLorenzo, but we know that he didn't make  
18 the endorsements, someone else did.

19 One of them doesn't even have an endorsement  
20 on it by Matteo DeLorenzo, but Mario Suriano's name  
21 is there. Michael Pappadio gave Mario Suriano 7 payroll  
22 checks to Esposito to have him build a house and he  
23 wants you to believe --  
24  
25

(Continued next page.)



1  
2  
3 I'm sorry if I misspoke myself. These were 7 payroll  
4 checks of Matteo DeLorenzo which were given to Mario  
5 Suriano to build a house, and he wants you to believe  
6 that Matteo DeLorenzo was a legitimate employee on  
7 his books. These checks, ladies and gentlemen, show  
8 you how Michael Pappadio was treating these, and all  
9 of these checks were issued to Matteo DeLorenzo and  
10 given to Mr. Suriano, not as alleged salary checks  
11 which Mr. DeLorenzo was depending upon so that he  
12 could pay his rent, mortgage and put gas in his car  
13 and food on the table. He treated these checks as his  
14 very own money to do with what he saw fit, including  
15 giving a loan of \$25,000 to his nephew by marriage  
16 to build a house. That's what Michael Pappadio  
17 thought of these checks. Why, because Michael Pappadio  
18 knew full well that Matteo DeLorenzo was just a name;  
19 he did no work, but was just a name on the books and  
20 that's all, a convenient device by which he could  
21 get money and do with it as he pleased.

22 Ladies and gentlemen, if there is any doubt as  
23 to why Helen Miller always gave DeLorenzo's checks to  
24 Michael Pappadio, always gave cash to Michael Pappadio,  
25 if there is any doubt why Irwin Dishins never even  
knew of Matteo DeLorenzo, he didn't even know he was



1  
2 on the payroll. Is there any question as to why  
3 the other customers doing business with MBH or Bidio  
4 never heard of or did business with Matteo DeLorenzo,  
5 I must submit to you, ladies and gentlemen, there can  
6 be no doubt in your minds after you have considered  
7 the testimony of Mario Suriano, because this money  
8 was not DeLorenzo's money, it was Pappadio's. The  
9 only explanation, I submit, that is consistent with  
10 logic and common sense, is what I have just said,  
11 because it is reasonable for you to decide that way.  
12

13 Now ask yourselves another question, ladies  
14 and gentlemen; did Matteo DeLorenzo get on the payroll  
15 of MBH and Bidio by mistake; was a 941 quarterly  
16 withholding of social security return prepared,  
17 including his name by accident. Was a W-2 form of  
18 that company issued to the name of Matteo DeLorenzo  
19 because of an inadvertent act, of course not; it all  
20 happened, I submit, because of a very careful plan,  
21 a conspiracy including Mr. DeLorenzo and Mr. Pappadio,  
22 where they had agreed that Mr. DeLorenzo would be  
23 included as a false employee on the books and records,  
24 and that Mr. DeLorenzo would get a false W-2 statement.  
25

Now remember the testimony of Mr. Raisman, who  
was the accountant for Mr. Pappadio and Mr. Buchman,



1 which clearly establishes that Mr. DeLorenzo's  
2 alleged salary was deducted as a legitimate business  
3 expense on the corporate returns of the two companies  
4 for the two fiscal years. We are talking about now  
5 those in question, which are the fiscal year ending  
6 October 31, 1969, where the corporation of MBH showed  
7 his salary was deducted, and further the salary when  
8 you deduct it, you lower your taxable income and so  
9 the lower your taxable income the less taxes you pay.  
10 The same would hold true for the corporate tax returns  
11 for Bidio Management for the fiscal year of 1970,  
12 by including the name of Matteo DeLorenzo, Michael  
13 Pappadio would take a fraudulent deduction for a  
14 salary for work that was never performed, and by taking  
15 that fraudulent deduction, he would reduce his taxable  
16 income fraudulently and evade corporate income taxes  
17 of MBH and Bidio.  
18

19 (Continued next page.)  
20  
21  
22  
23  
24  
25



1  
2  
3 Now, the defense may argue to you, well, the  
4 taxes were paid. The Government got money. DeLorenzo  
5 submitted tax returns. They are in evidence. In  
6 1968 he paid the Government money. 1969, he paid the  
7 Government money. In 1970, he paid the Government  
8 money. In 1971, the Government got money from Matteo  
9 DeLorenzo.

10 Well, remember the testimony, ladies and  
11 gentlemen. I asked both Mr. Raisman and Mr. Buchbinder.  
12 They gave the same answers. I asked them if Michael  
13 Pappadio got that money. Then that is what counts.  
14 The amount of money that was available in Mr. DeLorenzo's  
15 name. The amount on the face of the checks after  
16 Federal withholding have been taken out or social  
17 security, state tax and city tax, this amount, the  
18 net amount (indicating). Michael Pappadio got that  
19 money and reported it on his income tax.

20 What tax bracket would he be in? Mr. Raisman  
21 and Mr. Buchbinder said oh, Mr. Pappadio was in the  
22 highest tax bracket. He would have to pay the largest  
23 amount, 70 per cent. What about Matteo DeLorenzo?  
24 What about his tax bracket? He was much less. His  
25 bracket was much lower. So I asked him, you say there  
would be more taxes due if Mr. Pappadio had to pay it



1  
2 than if Mr. DeLorenzo had to pay it? Yes.

3 Mr. Buchbinder told us that over the 4-year  
4 period, 1968 to 1971, this net amount of money amounted  
5 to \$98,000, approximately \$100,000. I submit to you,  
6 ladies and gentlemen, that that \$100,000 or \$98,000,  
7 went to Michael Pappadio. Just as he used 7 checks  
8 of DeLorenzo to give to his nephew, he got all the  
9 other money and he got it without paying Federal  
10 income tax on it. Because you remember what the  
11 testimony was, Mr. Buchbinder said, well, if Mr.  
12 Pappadio had taken this \$98,000 and reported it on his  
13 Federal income tax returns, his personal income tax  
14 returns in his bracket, he would have to pay approxi-  
15 mately \$63,000 in taxes on that \$98,000.

16 Here I submit there is a pretty good motive.  
17 You get \$100,000. You don't pay any tax.

18 Well, you may be asking yourselves, yes, but  
19 wait a minute, didn't DeLorenzo pay taxes out of it?  
20 Don't we have to subtract that amount of money, the  
21 money that DeLorenzo paid? Well, let's look at the  
22 evidence and see. Let's see who paid Mr. DeLorenzo's  
23 taxes.

24 Remember about the 3 large checks I told you  
25 about earlier, one in 1969, one in '70 and one in  
'71. And some of the tax returns of Mr. DeLorenzo, he



1  
2 lists the checks as bonuses. As you all know, you  
3 pay your taxes, your personal taxes, in the April of  
4 the year following. Now, in 1968, you remember the  
5 testimony, Mr. DeLorenzo reported he was a salesman  
6 for MBH and he also had additional income regarding  
7 some stock transactions that he had, but he reported  
8 his salary from MBH as \$35,000. The testimony was  
9 that the tax on that \$35,000 which he says he got  
10 from MBH would have been approximately \$13,000.

11 What happens in April of 1969 at around the  
12 same time that Mr. DeLorenzo was telling the Government  
13 that he has got to pay approximately \$13,000, although  
14 it doesn't say \$13,000 on the exhibit, because the  
15 tax return included the other money that he made from  
16 the sale of stock? You remember the testimony of Mr.  
17 Buchbinder. He said just taking 35,00, he would have  
18 to pay about 13,000 on that. And that very same month,  
19 around the same time, lo and behold, MBH Sales issues  
20 a check made by Michael Pappadio to Matteo DeLorenzo  
21 for \$12,000.

22 Ask yourselves, is that a coincidence? Is it  
23 an accident that right around the time Matteo DeLorenzo  
24 has got to pay \$13,000 in taxes on the salary he is  
25 supposed to be getting from MBH, lo and behold, to the



1  
2 rescue, Michael Pappadio with the \$12,000 check?

3 Let's look at the next sheet. For the year  
4 1969, Mr. DeLorenzo, again reporting himself as a  
5 salesman from MBH, says that he owes the Government  
6 approximately \$7,231, additionally, in addition to  
7 what was withheld by the corporation. Now, he signed  
8 it and dated it March, 1970. What happens April 6th?  
9 Bidio Management, a check made out by Michael  
10 Pappadio, payable to Matteo DeLorenzo. How much,  
11 \$8,000. Is that another coincidence? Is that another  
12 coincidence?

13 In 1970, again Matteo DeLorenzo, salesman,  
14 \$7,561, that is what he says he owes the Government.  
15 He signs it. It is dated at the time he signs it,  
16 3/22/71, March 22, '71. What happens April 2, 1971?  
17 Michael Pappadio makes out a check to Matteo DeLorenzo,  
18 \$6,000.

19 Ask yourselves, ladies and gentlemen, who is  
20 paying the taxes of Matteo DeLorenzo, Matteo DeLorenzo  
21 or the corporation? Michael Pappadio? And remember  
22 that those large amounts, that \$12,000, that \$8,000,  
23 that \$6,000, was included in Mr. DeLorenzo's next  
24 year's salary. So when the corporation wrote a check  
25 for \$12,000 to DeLorenzo, it was included as salary

1 so the corporation would get a corporate deduction  
2 for paying a bonus to an employ-e of \$12,000.  
3

4 Now, I think you can start to see the scheme  
5 formulating, because this scheme had a mutual benefit  
6 for Michael Pappadio and Matteo DeLorenzo. Michael  
7 Pappadio got the benefit, taking a corporate deduction  
8 for salary. Because you remember the testimony of  
9 the accountants. There were basically three ways  
10 the corporation could dispense money. One would be  
11 a loan, one would be a dividend and the other was  
12 salary.

13 Now, if the corporation dispensed a loan or  
14 a dividend, that was not deductible as a business  
15 expense. The only way a corporation could take a  
16 deduction was on salary. So Michael Pappadio issues  
17 salary checks in the name of Matteo DeLorenzo, the  
18 corporation gets a deduction. The corporate taxes --  
19 Number One, Michael Pappadio gets that money back.  
20 It is his money, so Michael Pappadio has the use of  
21 that money and doesn't have to pay any taxes. Number  
22 Two, the money which is used to pay the taxes in the  
23 name of Matteo DeLorenzo for the prior year, if it  
24 were 1968, comes out of the corporation in the next  
25 April, in 1969, so that Matteo DeLorenzo doesn't have  
to pay taxes. The corporation pays the taxes for him



1  
2 and in the year that it gives him the check, deducts  
3 that again as salary to an employee.

4 It is a vicious cycle. It keeps spiraling,  
5 and the benefit that Matteo DeLorenzo gets out of  
6 this is that it enables him to put down a false  
7 source of income on his personal tax return. As I  
8 told you in my opening, the evidence didn't show  
9 what motive Mr. DeLorenzo may have had for putting  
10 down a false source of income on his personal tax  
11 return. All the evidence, I submit, has shown over-  
12 whelmingly that he did put down a false source of  
13 income. And the Government need not prove motive,  
14 because oftentimes motive, the reason why someone  
15 does something is locked in the mind of the person  
16 committing the act.

17 But there you see it, ladies and gentlemen.  
18 There you see it. This whole scheme benefitted Mr.  
19 Pappadio, benefitted Mr. DeLorenzo, evaded corporate  
20 taxes, caused false statements to be put on 941  
21 returns, provided Mr. DeLorenzo with a false source of  
22 income. You see how one hand is working with the other.

23 Mr. DeLorenzo -- excuse me, Mr. Pappadio makes  
24 it appear on the corporate books and records as if Mr.  
25 DeLorenzo is an employee, files 941 quarterly returns,

1  
2 issues paychecks in the name, gives him a W-2 form.  
3 What does Mr. DeLorenzo do? Mr. DeLorenzo takes the  
4 W-2 form, writes on it on his tax returns, salesman,  
5 MBH, Bidio, here is the W-2 form. That is my source  
6 of income, Uncle Sam. One hand washes the other.

7 Without Mr. Pappadio generating that bookkeeping,  
8 that paperwork, those W-2's, those checks, Mr. DeLorenzo  
9 wouldn't have been able to have a false source of  
10 income. And by filing a false source of income and  
11 using that W-2, Mr. DeLorenzo was given an air of  
12 legitimacy to the deductions, the corporate deductions,  
13 which Mr. Pappadio was taking, and also the fact that  
14 in fact Mr. Pappadio was getting that money and using  
15 that money and not paying any taxes on it.

16 Make no mistake, ladies and gentlemen, both  
17 DeLorenzo and Pappadio were necessary, knowing, willful,  
18 intentional participants in this scheme. Each aided  
19 and abetted the other.

20 Now, ladies and gentlemen, you have been very  
21 patient. The hour is growing late. I want to thank  
22 you for your attention, and I want you to analyze the  
23 evidence. Listen to the arguments of counsel tomorrow.  
24 It will be tomorrow when I talk to you again. Look  
25 at the evidence and look at it fairly. Look at it



1  
2 objectively. Look at it impartially. Look at it  
3 with your own good common sense. And after you have  
4 done that, ladies and gentlemen, I am confident that  
5 you will be more than justified in finding Michael  
6 Pappadio and Matteo DeLorenzo guilty as charged,  
7 thank you.

8 THE COURT: All right, members of the jury,  
9 I am going to excuse you for the rest of the day and  
10 I will see you back here. I suggest 10:30 tomorrow  
11 morning and we will be ready to continue. You will  
12 hear counsel for the defendants arguing their version  
13 of what the evidence shows, so remember it is very  
14 important now at this time that you not talk about  
15 this case to anyone at home. You still have to hear  
16 the other side. You have to hear the instructions  
17 of the Court, so I bid you good-night.

18 (Whereupon, the jury left the courtroom.)

19 THE COURT: Good-afternoon, I will see you  
20 tomorrow.

21 MR. SCOTTI: Good-afternoon, Judge.

22 \* \* \* \*  
23  
24  
25

GOVERNMENT'S REBUTTAL SUMMATION

Scotti-rebuttal (pp. 121a-144a) 1284

121a

(After recess.)

(Jury not present)

THE COURT: Are you ready, Mr. Scotti?

MR. SCOTTI: Yes.

(Jury enters jury box.)

THE COURT: You may go ahead, Mr. Scotti.

MR. SCOTTI: Thank you, your Honor.

Ladies and gentlemen, you have now heard arguments for both the defendant Pappadio and Mr. DeLorenzo, and I want to make a few comments in this rebuttal on their summations. I will take them in the order of which they were given. We will deal with Mr. Kossman first and then Mr. Markowitz second.

I would submit to you, ladies and gentlemen, if there was any thrust to Mr. Kossman's summation it was to very skillfully and scrupulously avoid discussing the evidence you heard during this trial and instead, to mount an attack based on emotion, volume and loudness of voice on Mr. Stern, the Government.

I suggest to you, ladies and gentlemen, that what Mr. Kossman's summation really boiled down to was that the Government is out to get Mr. Pappadio. In line with that, ladies and gentlemen, I would submit that that kind of argument has really no place in a



1  
2 court of law in this country because the basic flaw in  
3 an argument like that is that the Government doesn't  
4 say, Mr. Pappadio, you are guilty. The Judge doesn't  
5 say, Mr. Pappadio, you are guilty. Yes, you -- if you  
6 are satisfied beyond a reasonable doubt based on the  
7 evidence that you have heard during the course of this  
8 trial -- you, the ladies and gentlemen of the jury, say  
9 Mr. Pappadio is guilty. That is the great safeguard,  
10 the great check, the bulwark of this democracy in this  
11 country -- you, the people, sitting right here,  
12 because you have to decide. You decide fairly,  
13 objectively, impartially based on the evidence.

14 Mr. Kossman mentions Watergate. That has  
15 nothing to do with this case. If anything, that was a  
16 tragic epoch in our history. It has nothing to do with  
17 MBH, Bidio, Michael Pappadio or Matteo DeLorenzo.

18 Mr. Kossman quoted Toynbee for you and Learned  
19 Hand. That has nothing to do with it. Certainly,  
20 Toynbee is a great historian. Learned Hand was a great  
21 judge. However, they were not witnesses.

22 He tells you that he wanted everything to come  
23 out. The Government has all this great evidence. He  
24 tells you what the Government did have and didn't  
25 produce. Well, ladies and gentlemen, you have heard



1 the Government's evidence, and that's it.

2 I would suggest to you that you are not supposed  
3 to speculate in your deliberations as to what might  
4 have been, what could have been, what if -- you are to  
5 base your determination on what you heard, on what the  
6 facts are, as you the jury find them.

7 Now, there were a few times that Mr. Kossman did  
8 discuss the evidence. One particular point he was  
9 talking about the seven paychecks that were supposed  
10 to be the paychecks of Matteo DeLorenzo that  
11 Mr. Pappadio gave to his nephew Mario Suriano to build  
12 a house. I discussed that yesterday and I'm sure it is  
13 still fresh in your minds.

14 Mr. Kossman suggests to you -- and his  
15 suggestion, I submit to you, is based not upon any  
16 evidence you heard during the course of the trial but  
17 based upon Mr. Kossman's speculation -- he says to you  
18 well, don't you think if Mr. Pappadio gave those  
19 checks to Suriano that he would have given the cash to  
20 Mr. DeLorenzo first? Does that make sense? Ask  
21 yourselves, is that logical?

22 Your nephew by marriage -- you have a niece and  
23 your niece has a husband and the husband comes to you  
24 and says look, I want to build a house. Will you give  
25



1  
2 me a loan to build a house? You say -- if you're in a  
3 financial position to do it -- you say, sure. What  
4 do you do? You make out a bank check or whatever.  
5 You give him your money. He is coming to you for the  
6 loan. You give him your money. If what Mr. Kossman  
7 says is so, why go through all this mysterious business  
8 about, I got to give DeLorenzo cash and then get his  
9 paycheck and then give his paycheck to Mr. Suriano --  
10 paychecks which, if you recall, were never even  
11 endorsed by Mr. DeLorenzo. Somebody else endorsed the  
12 name DeLorenzo but not Mr. DeLorenzo. What is that  
13 all about? Mr. Kossman's argument just doesn't hold  
14 water. It's not logical. It's not consistent with  
15 the evidence, which I suggest to you, ladies and  
16 gentlemen, conclusively proved during the course of  
17 this trial that none of the checks written out in  
18 DeLorenzo's name were really for DeLorenzo. They  
19 were for Pappadio. DeLorenzo never considered it his  
20 money and Pappadio always considered it his money.  
21 That's why he would take the DeLorenzo checks and  
22 give them to Suriano.

23 I submit to you that there is no logical  
24 reason why a person would take cash, give it to  
25 Mr. DeLorenzo and say here, don't keep your paycheck.



1  
2 I am giving you cash for your paycheck and then take  
3 the DeLorenzo paycheck and give it to Suriano as a  
4 loan. It just doesn't make any sense. Give Suriano  
5 the cash. What do you have to have DeLorenzo's  
6 paycheck for? There's no legal requirement that says  
7 if you want to give your nephew by marriage a loan  
8 you have to give it to him with a salary check of  
9 somebody else. That's ridiculous.

10 Mr. Kossman also said look at the tax returns  
11 of Mr. Pappadio. He paid half a million dollars in  
12 taxes from 1968 to 1971. Why would a man like that  
13 cheat for pennies? Ladies and gentlemen, \$98,000  
14 isn't exactly pennies. Of course, Mr. Pappadio was  
15 paying a lot in taxes on the money he had to report  
16 because he was in a very high tax bracket. He was in  
17 the highest tax bracket. There's no question about  
18 that. I submit to you, ladies and gentlemen, that  
19 the \$98,000 -- I don't care how much taxes you pay --  
20 if you can get \$98,000 without having to report it on  
21 your income tax return and without having to pay taxes  
22 on it and you want to knowingly, willfully and  
23 intentionally defraud the Government, you'll do it.  
24 Make no mistake about that.

25 Mr. Kossman says oh, but the Government didn't



1  
2 indict Mr. Pappadio for personal tax evasion. There-  
3 fore, I assume from Mr. Kossman's argument that this  
4 case means nothing because we didn't indict  
5 Mr. Pappadio for personal tax evasion. I don't know  
6 if he means that if we did indict him for personal  
7 tax evasion he'd automatically be guilty. I don't  
8 think he means that. I'm sure he doesn't mean that.

9 Mr. Pappadio wasn't indicted for personal  
10 income tax evasion. We should have but we didn't. I  
11 submit you shouldn't consider that whether or not he  
12 was or wasn't indicted for some other charge has  
13 anything to do with this case because it doesn't.

14 As you will recall, this evidence was presented  
15 on the issue of motive -- to show you what possible  
16 motive Mr. Pappadio would have.

17 One other thing I just want to touch on very  
18 briefly: Mr. Kossman mentioned to you that the  
19 Government is prejudiced against Mr. Pappadio because  
20 of his heritage. That's nonsense. That's absolute  
21 nonsense.

22 There are people of many, many heritages in  
23 the Government that worked on this case, prosecuted  
24 this case which are of the same heritage as  
25 Mr. Pappadio. That has nothing to do with anything.

1 I know you will not be fooled by that kind of appeal.

2 As I said, this case is to be decided on the  
3 facts and the facts alone.

4  
5 Mr. Kossman asked you a very interesting  
6 question. He says, what did Mr. DeLorenzo live on?  
7 It's a good question. He said he knew -- what he said  
8 was -- I know Mr. DeLorenzo had to render some  
9 services. He knows. What he knows has nothing to do  
10 with your decision. The only thing that has to do  
11 with your decision is the evidence that you heard from  
12 that witness stand because it is meaningless what he  
13 knows and that's why as jurors you are only to decide  
14 cases on the evidence, because trials are not contests  
15 between lawyers. A trial is not a contest between  
16 Mr. Kossman getting up and saying I know, and me  
17 getting up and saying I know he didn't. That has  
18 nothing to do with anything.

19  
20 (continued next page)



1  
2 MR. SCOTTI: (Continuing) He kept asking, what  
3 did he live on, what did he live on, what did he live  
4 on? Well, the evidence didn't show that. The  
5 evidence certainly did show that he certainly didn't  
6 live on the money that was supposedly generated for him  
7 by MBH and Bidio because he never got it.

8 Now, Mr. Markowitz tells you that one of the key  
9 issues in this case is whether or not Mr. DeLorenzo  
10 actually got the money, and I submit to you, ladies  
11 and gentlemen, that is not nearly the key issue.  
12 Whether or not Mr. DeLorenzo got the money is  
13 certainly important evidence but only as it relates  
14 to whether or not he ever worked for the corporations  
15 MBH and Bidio because certainly, if a person is supposed  
16 to be working for a corporation, if his business and  
17 salary checks are drawn in his name and he doesn't get  
18 the money, the salary checks, that's a pretty good  
19 indication that he wasn't working for the company.

20 The real issue, as I said to you before, is  
21 did he work and not whether or not he got the money.

22 Remember, Mr. Pappadio, if he wanted to, could  
23 have given gifts to Mr. DeLorenzo. He could have  
24 liked him. He could have said listen, you're a good  
25 friend of mine. We're buddies for a long time. I've



1  
2 got money. I'll give you some money. I'm going to  
3 give you money from my corporation, and he could have  
4 issued checks to Mr. DeLorenzo from the corporation  
5 and Mr. DeLorenzo could have cashed them and lived on  
6 them. Mr. Pappadio had a perfect right to do that.  
7 But he then could not have said on the corporate books  
8 and records that Mr. DeLorenzo was an employee and  
9 take corporate deductions for salaries being paid for  
10 work and Mr. DeLorenzo could then not have said on his  
11 personal tax return, my source of income is MBH and  
12 Bidio for work I did for MBH and Bidio. And that,  
13 ladies and gentlemen, is what this case is about.

14 Mr. Markowitz mentioned to you a lot of figures,  
15 a lot of how much money was paid in taxes and how much  
16 wasn't paid in taxes. I'll get to that.

17 At this point, I want to put the case concerning  
18 Mr. DeLorenzo in its proper perspective.

19 Mr. DeLorenzo is not being charged with evading  
20 the payment of taxes. He is only being charged on the  
21 personal returns which he filed, with supplying the  
22 Government with a false source of income. That's all.

23 Mr. Markowitz told you that there was no  
24 evidence that Mr. DeLorenzo did no work for the  
25 corporations. He says Nat Sacco saw him. Nat Sacco



1  
2 saw him once or twice a week.

3           Isn't it interesting, ladies and gentlemen, that  
4 -- let's take that for a minute -- let's say that Nat  
5 Sacco saw him once or twice a week. Nat Sacco told us  
6 that outside of being introduced to Mr. DeLorenzo as  
7 a salesman by Mr. Pappadio he didn't know what he did.  
8 He never got any instructions from him, never got the  
9 orders from him, didn't know what he did, didn't have  
10 the faintest idea.

11           Here's a man employed, supposedly, by  
12 Mr. Pappadio, for six years, 1966 through 1972 -- the  
13 beginning of 1972 -- for the two corporations, MBH  
14 and Bidio. I assume that since Mr. Sacco said he saw  
15 him up there at MBH and Bidio Mr. Markowitz wants you  
16 to believe that just because he saw him there he must  
17 have been employed. That doesn't necessarily follow.

18           Just because you walk into a place and see  
19 somebody, even if a good friend of yours, that doesn't  
20 mean he works there and just because your name appears  
21 on the 941 returns, the withholding forms, and on the  
22 payroll and you get a W-2 form, doesn't mean you're  
23 actually legitimately employed. Sure, it looks that  
24 way but that was the whole point of the scheme -- to  
25 make it look that way.



1  
2 Mr. Markowitz tells you there were other pay-  
3 checks issued to DeLorenzo in 1966, 1967, too. It  
4 doesn't make a difference if he didn't endorse the  
5 checks Mr. Scotti tells you about, he says. Well,  
6 unfortunately, we don't have those paychecks. The only  
7 paychecks we have are for 1969, 1970 and 1971. So, we  
8 don't know. It is not evidence whether or not  
9 Mr. DeLorenzo did in fact sign them or did not.  
10 However, you are allowed to draw reasonable inferences  
11 from the evidence which you hear. You decide. Look  
12 at the evidence that you do have. One hundred fifty-  
13 two checks; twenty-one signed by DeLorenzo. How many  
14 of the others do you think he signed? For two whole  
15 years, 1969 and 1970 he didn't sign one. Why? Because  
16 they really weren't his. Oh, they were in his name  
17 but they really weren't his.

18 Mr. Markowitz suggests to you that the two  
19 companies, Liz Roberts, and the other company, Smart  
20 Sue, were originally solicited by Mr. DeLorenzo. He  
21 talks to you about Mr. Passeroff and Mr. Korman.  
22 You can ask that the testimony be read back to you.

23 Mr. Korman told us -- and I know I am repeating  
24 what I said yesterday in some parts, but I am sure you  
25 will understand that I must in relation to some of the



1 things Mr. Markowitz said -- Mr. Korman told us that  
2 he has known Mr. Pappadio for about seventeen, twenty  
3 years, and that it was his partner, Murray Backer who  
4 was friendly with Mr. Pappadio. So, they started to  
5 use that company, MBH, back in 1961, long before  
6 DeLorenzo was ever put on the books and records because  
7 DeLorenzo was put on the books and records in 1966.  
8

9 I don't know if he, Mr. Markowitz, wants you to  
10 think for four years before being put on the books and  
11 records, Mr. DeLorenzo got this lead, but that defies  
12 logic, I submit to you, defies common sense.

13 Mr. DeLorenzo had nothing to do with Larry  
14 Korman's company, Smart Sue.

15 He talks to you about Arnold Passeroff -- his  
16 company was Liz Roberts -- and his father made the  
17 original arrangements for cutting work with MBH many  
18 years before and that he, Arnold Passeroff, took over  
19 the relationship.

20 Remember, as I said to you yesterday -- and  
21 you'll probably recall the very testimony of  
22 Mr. Passeroff -- he said, I very rarely spoke to  
23 Pappadio but I spoke to Nat Sacco all the time. Nat  
24 Sacco, the cutting foreman. That makes sense. That  
25 makes sense. You're going to talk to the fellow doing



1 the work because you have to remember, ladies and  
2 gentlemen, that in this company there are only a very  
3 small group of employees or categories of employees.  
4 There were the cutters, the people who cut the material;  
5 the stretchers, the people who stretch the material on  
6 the boards or whatever they put the material on to cut.  
7 There was the foreman, Mr. Sacco, who was also head  
8 cutter. That's one group. There was Helen Miller,  
9 the bookkeeper. There was Michael Pappadio, the boss  
10 who controlled everything, and there was Erwin  
11 Bishins, the partner who came in once in awhile to  
12 price the cutting. It's a very small group. Where  
13 does Mr. DeLorenzo fit in here? No place, no place.  
14 Why? Because he didn't work. That's why nobody ever  
15 heard of him.

17 Can a man work in an industry for eight years  
18 from 1966 to 1972 and nobody, nobody that does business  
19 with that company ever heard of him? Some of the  
20 people, some of the witnesses, some of the customers  
21 even knew Helen Miller. They didn't know her well but  
22 they knew she was the bookkeeper. Some of them would  
23 refer to her as "the woman who kept the books" and  
24 I would say, you mean Helen Miller and they'd say,  
25 yes, that's the woman. They never heard of DeLorenzo.

1 Why? Because he was a fiction.

2 Now again, your recollection of the testimony  
3 is what counts and if you have any question about it  
4 I would agree with Mr. Markowitz -- ask that it be  
5 read back.

6 Mrs. Miller testified that some time she would  
7 leave the checks in the drawer and Mr. Pappadio would  
8 sometimes take the checks. She did not testify that  
9 sometimes she would leave the cash in the drawer.  
10 She testified that she always gave the cash to  
11 Michael Pappadio and you know, we know, that had to be  
12 a very extraordinary situation.

13 Mr. Markowitz says, well, you know Helen Miller  
14 cashed the checks for a lot of people. She was a very  
15 nice woman. Remember what Nat Sacco said -- the  
16 brother-in-law of Michael Pappadio -- she would cash  
17 checks. When? Well, she would never cash checks for  
18 people who were not there. It was an accommodation.  
19 If someone was too busy to go to the bank they would  
20 ask her, would you cash my check for me? They would  
21 sign the check. Would you bring me back the cash?  
22 Helen Miller would say, sure. But with Matteo  
23 DeLorenzo the cash always went to Pappadio. Even  
24 when DeLorenzo was there he never asked her and she  
25



1  
2 never gave it to him. Legitimate employee or phantom?  
3 You have to decide.

4 Mr. Markowitz also made an argument to you that  
5 the Government's theory involves a very silly way on  
6 how to cheat the Government.

7 What Mr. Markowitz is doing is substituting the  
8 way he might have done it for the facts. He is  
9 speculating into the way, the better way to do it might  
10 be. But you're not to speculate as to the best way to  
11 evade taxes or file a false statement on your income  
12 tax returns. You are only to decide, based on the  
13 evidence which you have heard, whether or not these  
14 men did what they are accused of doing.

15 Mr. Markowitz also told you that there was no  
16 evidence that Mr. DeLorenzo helped prepare the 941's,  
17 these quarterly withholding and Social Security forms.  
18 He's right. There was no evidence of that.

19 Ladies and gentlemen, I told you yesterday  
20 this scheme did not come about by accident. It was a  
21 plan, it was an agreement, it was a conspiracy  
22 between Mr. Pappadio and Mr. DeLorenzo where in  
23 essence, Mr. DeLorenzo said sure, you use my name and  
24 I'll use the corporation's name. You use my name for  
25 your purposes and I'll use the corporation's name for



1  
2 my purposes.

3 MR. MARKOWITZ: I object to that. That is not  
4 the evidence.

5 There is no evidence that Mr. DeLorenzo said,  
6 I'll use your name --

7 MR. SCOTTI: I said, it's the scheme. I didn't  
8 say he said it.

9 THE COURT: The question is, is it a fair  
10 inference?

11 I remind the jury that anything said by the  
12 attorneys is not evidence and you must base your  
13 decision on the facts as you perceive them.

14 MR. SCOTTI: May I proceed, your Honor?

15 THE COURT: Yes.

16 MR. SCOTTI: Thank you, your Honor.

17 Now, if you find that was in fact the scheme,  
18 I submit to you, ladies and gentlemen, it is not  
19 necessary for Mr. DeLorenzo to be around every time  
20 these forms are prepared because once you give your  
21 name for someone else to use and you have an under-  
22 standing as to what is going to be done, you don't  
23 have to stand there and say, what's my position? Am  
24 I going to be the first name, second, third or fourth?  
25 How is this document prepared? Should I know how it is



1  
2 going to be done? No, of course not. You say,  
3 here's the name. Take it, use it. You do with it  
4 what you want and I'll do what I want and by giving  
5 Mr. Pappadio that name he aided and abetted  
6 Mr. Pappadio in everything he did with that name just  
7 as by Mr. Pappadio giving that W-2 form to  
8 Mr. DeLorenzo and Mr. DeLorenzo putting on that  
9 return that he was employed and worked and earned  
10 income from MBH and Bidio that was a false statement  
11 and Mr. Pappadio helped Mr. DeLorenzo make that false  
12 statement by giving him the W-2. He didn't have to  
13 physically hand it to him, physically type it out with  
14 his hands and say here, here's your W-2 form. In  
15 this day and age you don't have to do that. You say,  
16 put this man on the payroll and everything else  
17 follows through.

18 Mr. Markowitz said this case doesn't make sense  
19 because the Government got more money than it should  
20 have gotten. Well, let's look at that because to a  
21 certain degree that statement begs the question --  
22 because if you find that Mr. DeLorenzo did no work for  
23 the corporation, I submit to you, ladies and  
24 gentlemen, that there would be absolutely no question  
25 but that the corporations, MBH and Bidio did not pay



1  
2 the tax that they were supposed to pay; that  
3 Mr. Pappadio evaded the payment of corporate taxes.  
4

5 (continued next page)  
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1  
2 MR. SCOTTI (Continuing) Mr. Markowitz really  
3 isn't contesting that. What Mr. Markowitz is saying,  
4 so far as you are concerned, you can stop right there.  
5 So as far as that is concerned, the evasion is still  
6 there.

7 But what Mr. Markowitz is saying is that when  
8 you compare the amount of money that would have been  
9 due if the taxes had been paid by the corporation with  
10 the amount of money that DeLorenzo paid, the  
11 Government made out ahead. Well, let's look at that.

12 By the way, before we do that, Mr. Markowitz  
13 told you that Mr. DeLorenzo was in the fifty-per cent  
14 tax bracket. So that out of this \$8,000 check he  
15 really didn't get it. He got 4,000. Out of the  
16 \$12,000 check, he only got 6,000. And out of the  
17 \$6,000 check, he only got 3,000.

18 Well, ladies and gentlemen, the checks are for  
19 12,000, 8,000 and 6,000. They were endorsed by Matteo  
20 DeLorenzo. And that's how much money he got.

21 Mr. Markowitz is talking about at the end of  
22 the tax year when you come to tally up your taxes,  
23 what bracket are you in, how much taxes do you have  
24 to pay? But every year for three years when there  
25 came out to be an additional tax which Mr. DeLorenzo



1  
2 owed, there was a corporate paycheck.

3 Now, that corporate paycheck, in essence, which  
4 I call a bonus check, paid the taxes. 1968, DeLorenzo  
5 owes \$13,000. In 1969, he gets a check for twelve.  
6 That \$12,000 in 1969 is included in his '69 alleged  
7 salary. So in 1970 when he's got to pay the tax for  
8 '69, the corporation gives him another check to pay  
9 the difference in federal taxes. So Mr. DeLorenzo  
10 wasn't paying anything. Mr. DeLorenzo wasn't out any  
11 fifty per cent on these three checks. The corporation  
12 is paying the tax for him.

13 Mr. Markowitz asks you, well, why would he do  
14 it, what's his motive?

15 He tells you he still had to pay state and city  
16 taxes.

17 Ladies and gentlemen, motive is oftentimes a  
18 very, very hard thing to establish because motive  
19 most of the time is locked up right in here. What  
20 he's really asking you is, what was his state of mind?  
21 How do you determine state of mind? Sometimes you can  
22 determine it by what people do, their actions,  
23 statements, circumstances. Sometimes you can't  
24 determine it. But one thing you can always determine  
25 and that is, what did the person do?



1  
2 And in this case we know that Matteo DeLorenzo  
3 reported a false source of income to the Government.  
4 He wanted the Government to believe for whatever  
5 reason he had, he wanted the Government to believe  
6 that he was getting that money to live on.

7 Kept asking, what do you live on?

8 He wanted the Government to believe that the  
9 money he was living on came from MBH and Bidio. I  
10 submit to you that the evidence has overwhelmingly  
11 established it did not come from MBH and Bidio.  
12 The money he lived on did not come from those  
13 corporations because he did no work for those  
14 corporations.

15 So what did he live on? We don't know. Had  
16 to live on some money because he can't live on thin  
17 air. We don't know what and we don't know where it  
18 came from or how it came. All we know is that  
19 Matteo DeLorenzo wanted to make it appear as if  
20 MBH and Bidio was the source. That's the benefit.  
21 That's the benefit to Matteo DeLorenzo. We don't know  
22 why. And I submit to you we don't have to know why.  
23 That's what he wanted. That's what the facts show.  
24 And that's what he got.

25 Now, ask yourselves, if Michael Pappadio through



1  
2 these checks was paying Mr. DeLorenzo's federal income  
3 taxes for him, maybe it was worth it for Mr. DeLorenzo  
4 to pay his own state and city taxes to preserve that  
5 benefit, that false source of income that he was  
6 showing the Government.

7 Ladies and gentlemen, everyone has told you --  
8 Mr. Kossman talked to you, Mr. Markowitz told you,  
9 he said he's been practicing fifty years -- practicing  
10 law for fifty years and tells you that this is a  
11 strange case. I submit to you, ladies and gentlemen,  
12 it is not strange. It is very simple. Very simple.  
13 Matteo DeLorenzo did no work for these corporations.  
14 He was carried fraudulently as an employee of these  
15 corporations. The corporations fraudulently deducted  
16 salary expenses paid to DeLorenzo. They evaded  
17 corporate taxes.

18 Michael Pappadio evaded corporate taxes of MBH  
19 and Bidio. That's what he's charged with.

20 Matteo DeLorenzo did no work for the  
21 corporations and he put down a false source of income  
22 That's what he is charged with.

23 And they are charged with conspiring, agreeing  
24 to do this together. And they are charged with  
25 helping each other with aiding and abetting each other



1 in this indictment. That's what they are charged with.

2 I submit to you that's what the evidence has  
3 overwhelmingly established. Very simple. Ladies and  
4 gentlemen, I am confident after you have discussed  
5 this evidence, analyzed it, gone through it, you will  
6 reach that same verdict.  
7

8 Now, Mr. Markowitz touched upon reasonable doubt.  
9 The Judge will tell you the law as to the legal  
10 definition of reasonable doubt. I just want to say  
11 one thing. It is not a magical phrase. I think after  
12 you have listened to the Judge's instructions on  
13 reasonable doubt you will see what it really boils  
14 down to is reason. It's reasonable because the  
15 Government certainly here has the burden of proving  
16 this case to your satisfaction beyond a reasonable  
17 doubt. And you should not convict until you are  
18 satisfied beyond a reasonable doubt. But that's what  
19 the phrase means. Reasonable. It doesn't mean  
20 whimsical. It doesn't mean hypothetical. It doesn't  
21 mean speculative. It doesn't mean all possible. Just  
22 reasonable doubt.

23 I am confident that based on the evidence that  
24 you will be more than justified in finding these  
25 defendants guilty as charged.



1  
2 Thank you.

3 THE COURT: Members of the jury, I am going to  
4 recess you for lunch because I don't want you to  
5 listen to my charge on an empty stomach. I am going  
6 to give you until 2:30.

7 (Whereupon, the jury retired from the courtroom.)

8 (Luncheon recess taken.)  
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**COURT OF APPEALS  
SECOND CIRCUIT**

~~UNITED STATES OF AMERICA~~  
UNITED STATES OF AMERICA,  
Plaintiff-A pallee,

- against -

~~OFFICE OF THE ATTORNEY GENERAL~~  
MICHAEL PAPPADIO,  
Defendant-Appellant.

*Index No.*

### Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

**SS.:**

*I, James A. Steele being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 112 West 136th Street; New York, New York*

That on the 16th day of January, 1978 at 225 Cadman Plaza  
Brooklyn, N.Y.

deponent served the annexed

upon

## Appendix

David Trager  
U.S. Attorney Eastern Dist.

the \_\_\_\_\_ in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the \_\_\_\_\_ herein,

Sworn to before me, this 16th  
day of January, 19 78

James A. Steele  
James A. Steele

ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1979